

# APPENDIX

Supreme Court, U. S.

Vol. I, No. 12

JUL 9 1976

## IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75 - 804

JOY A. FARMER, Special  
Administrator of the Estate  
of Richard T. Hill,

Plaintiff-Petitioner,

vs.

UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS  
OF AMERICA, LOCAL 25,  
et al.,

Defendants-Respondents.

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ON WRIT OF CERTIORARI TO THE  
CALIFORNIA COURT OF APPEAL  
SECOND APPELLATE DISTRICT,  
DIVISION FIVE

---

PETITION FOR CERTIORARI  
Filed December 5, 1975

CERTIORARI GRANTED  
January 26, 1976

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Chronological List  
of  
Relevant Docket Entries

1. April 17, 1969 -- Plaintiff Hill's original Complaint for Damages (Personal Injury) filed in Superior Court of the State of California for the County of Los Angeles.
2. January 31, 1972 -- Plaintiff's Motion to File First Amended Complaint for Damages filed.
3. March 7, 1972 -- Plaintiff's Motion to File First Amended Complaint granted.
4. April 4, 1972 -- Defendants' Demurrer to First Amended Complaint for Damages filed.
5. May 12, 1972 -- Demurrer sustained as to First, Third and Fourth Causes of Action of First Amended Complaint without leave to amend, but overruled as to Second Cause of Action.
6. June 20, 1972 -- Defendants' Answer to First Amended Complaint filed.
7. December 11, 1972 -- Jury trial of action commenced.
8. February 2, 1973 -- Court's charge to jury.
9. February 2, 1973 -- Verdict of jury in favor of Plaintiff.

a.

10. February 5, 1973 -- Judgment of Superior Court entered, awarding Plaintiff \$7500 in compensatory damages and \$175,000 in punitive damages against Defendants Daley, Local 25 of the United Brotherhood of Carpenters and Joiners of America and the Los Angeles District Council of Carpenters.
11. March 30, 1973 -- Defendants' Notice of Appeal filed.
12. June 30, 1975 -- Opinion of Court of Appeal of the State of California, Second Appellate District, Division Five, filed.
13. September 10, 1975 -- Petition for Hearing in California Supreme Court denied.

b.

[CT 102]

SUPERIOR COURT  
OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

RICHARD T. HILL,	)
	)
Plaintiff,	)
	)
vs.	)
	)
UNITED BROTHERHOOD OF	)No. 951 866
CARPENTERS AND JOINERS	)
OF AMERICA, LOCAL 25,	)PROPOSED
an unincorporated association;	)FIRST
THE LOS ANGELES COUNTY	)AMENDED
DISTRICT COUNCIL OF	)COMPLAINT
CARPENTERS, an unincorporated	)FOR
association; UNITED BROTHER-	)DAMAGES
HOOD OF CARPENTERS AND	)
JOINERS OF AMERICA, an	)Filed
unincorporated association;	)January 31,
EARL GEORGE DALEY;	)1972
BENJAMIN FENWICK; JOSEPH	)
WILK; JAMES KEEN; KENNETH	)
SCOTT; GREEN COMPANY, a	)
corporation; BLACK COMPANY,	)
an unincorporated association;	)
DOES I through XX, inclusive,	)
	)
Defendants.	)

---

1.

FOR CAUSE OF ACTION against all  
Defendants, Plaintiff alleges:

1.

The true names and capacities, whether  
individual, corporate, associate, or otherwise,  
of defendants GREEN COMPANY, BLACK

[CT 103]\*

COMPANY,\* and DOES I through XX, inclusive,  
are unknown to Plaintiff who therefore sues said  
Defendants by such fictitious names; Plaintiff  
is informed and believes and thereon alleges  
that each of the Defendants so fictitiously  
designated herein is legally responsible in some  
manner for the events and happenings herein  
referred to, and caused injury and damages to  
the Plaintiff as herein alleged.

2.

At all times relevant herein Defendant  
UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, LOCAL 25 was,  
and still is, an unincorporated association  
affiliated with Defendant LOS ANGELES COUNTY  
DISTRICT COUNCIL OF CARPENTERS and  
with Defendant UNITED BROTHERHOOD OF  
CARPENTERS AND JOINERS OF AMERICA,  
and possessing and asserting jurisdiction over  
members of these organizations at said Local's  
main office located in the City and County of Los  
Los Angeles, California. Local 25 is affiliated

2.

to the other Defendant organizations and is chartered by them and derives its power, duties and jurisdiction from each of them.

3.

At all times herein mentioned Defendants, and each of them, were and now are engaged in the business of being a labor union, or employees of a labor union, operating under the common and fictitious names as aforesaid, and said Defendants are sued herein by said common names pursuant to the provisions of Section 388 of the California Code of Civil Procedure.

4.

At all times herein mentioned each of the Defendants was the agent and employee of each of the remaining Defendants and was at all times acting within the purpose and scope of said agency

[CT 104]\*

and\* employment.

5.

At all times relevant herein Plaintiff was, and still is, a journeyman carpenter and a member in good standing with each and every organization listed in paragraph 2 above. Plaintiff has duly sought and exhausted all of his remedies provided for in the constitutions and/or by-laws of the aforesaid organizations.

3.

6.

At all times mentioned herein there has been in existence that certain collective bargaining agreement entitled "Master Labor Agreement Between Southern California General Contractors and United Brotherhood of Carpenters and Joiners of America" (hereinafter referred to as the "Agreement") between Defendant labor organizations and the Southern California Chapter of the Associated General Contractors of America, The Engineering and Grading Contractors Association, Inc., the Building Industry Association of California.

Article II, Section 201 of said Agreement provides: "The Contractors hereby recognize the Union as the sole and exclusive collective bargaining representative of employees of the Contractors over whom the Union has jurisdiction."

Section 203 provides: "This Agreement shall be binding upon each and every eligible member of the Southern California Chapter of The Associated General Contractors of America, and The Engineering and Grading Contractors Association, Inc., with the same force and effect as if this Agreement were entered into by each member individually; and this Agreement shall be binding upon each and every member of the

[CT 105]\*

Building Industry Association of\* California, Inc., who becomes signatory hereto."

4.



Section 204 provides: "In the employment of workmen for all work covered by this Agreement . . . the following provisions . . . shall govern: 204.1 The Local Unions shall establish and maintain open and non-discriminatory employment lists for the use of workmen desiring employment on work covered by this Agreement and such workmen shall be entitled to use such lists free of charge."

Section 204.2 provides: "The Contractors shall first call upon the Local Union having work and area jurisdiction for such men as they may from time to time need, and the respective Local Union shall furnish to the Contractors the required number of qualified and competent workmen and skilled mechanics of the classifications needed by the Contractors strictly in accordance with the provisions of this Article.:

Section 204.4 provides: "The Local Union or District Council will dispatch in accordance with the request of the Contractor each such qualified and competent workman from among those entered on said lists in numerical order to the contractor by use of a written referral in the following order of preference and the selection of workmen for referral to jobs shall be on a non-discriminatory basis:

"204.4.1 Workmen specifically requested by name who have been employed, laid off or terminated as Carpenters in the geographic area of the Local Union or District Council, as the case may be, within three years before such

request by a requesting individual employer now desiring to reemploy the same workmen, provided they are available for employment.

[CT 106]

"204.4.2 Workmen who, within five years immediately before the Contractor's order for men have performed work of the type covered by this Agreement in the geographic area of the Agreement, as defined in paragraph 101, provided such workmen are available for employment.

"204.4.3 It is agreed that in connection with the preference outlined in subparagraph 204.4.2 up to 25% of the employees, excluding foremen, employed to perform work covered by this Agreement on any project may be employees designated by the individual employer."

7.

Pursuant to said Agreement carpenters who are seeking employment sign "availability lists." Thereafter, the business agents of Local 25 and/or the District Council are required, pursuant to said Agreement, to dispatch the unemployed carpenters from the availability lists on a "first sign, first dispatched" basis; as the chronologically earlier signers are dispatched to a job, the names remaining are moved "up" the list.

6.

8.

Between January 1, 1967, and April 1, 1969, Plaintiff repeatedly signed the aforementioned lists of availability and was at all times ready, willing and able to accept available employment. During the same period Plaintiff's names was specifically requested by one or more employees. However, rather than dispatching Plaintiff to work as required Defendants, and each of them, wrongfully and intentionally refused to dispatch Plaintiff in accordance with The Rules of Procedure, always to the Plaintiff's economic and physical detriment.

[CT 107]

Plaintiff was further discriminated against in that Defendant and each of them, conspired to and did dispatch Plaintiff to jobs (when he was dispatched) of short duration and least desirability, rather than dispatching him to jobs in a systematic non-discriminatory order; by reason of said discrimination, Plaintiff was caused to be out of work and on the eligibility lists for longer time periods than normally would have been experienced but for said discrimination.

9.

There is and was no just reason for said discrimination against Plaintiff who is informed and believes, and on the basis of such information

7.

and belief alleges that the reason for said job discrimination was because Plaintiff was a leading member of an intra-union political faction generally regarded as being opposed to the political faction which was managing, operating and controlling Local 25 as well as the other Defendant labor organizations.

10.

As a proximate result of the intentional and wrongful discriminatory conduct practiced by Defendants, and each of them, as aforesaid, Plaintiff has suffered a nervous breakdown, grievous mental anguish and bodily injury making him sick, sore and lame; as a result Plaintiff has been hospitalized and forced to incur medical and related expenses, the exact amount of which is presently unknown to Plaintiff; Plaintiff will ask leave of the Court to insert said amount at the time of trial.

As a proximate result of the aforesaid intentional conduct of Defendants, and each of them, Plaintiff has suffered, and claims, general damages in the sum of \$500,000.00.

[CT 108]

11.

All of the aforesaid acts, conduct and discrimination by Defendants, and each of them,

8.



were committed deliberately and maliciously and by reason of such deliberate malice Plaintiff asks that punitive damages be assessed against Defendants, and each of them, in the sum of \$500,000.00.

SECOND SEPARATE CAUSE  
OF ACTION

For a second and separate cause of action against Defendants, and each of them, Plaintiff alleges:

12.

Plaintiff repeats and herein incorporates by reference as though fully set forth in detail Paragraphs 1, 2, 3, 4, 5, 10, and 11.

13.

During the aforesaid period Defendants, and each of them, made repeated oral threats to Plaintiff to the effect that as long as they controlled the job-dispatching procedures that Plaintiff would be and he was given inferior assignments and be by-passed for work assignments. During the same period, as aforesaid, Defendants, and each of them, repeatedly threatened Plaintiff with actual or defacto expulsion from the union in retaliation for his political activities, and further threatened to deprive Plaintiff of his ability to earn a living as a carpenter.

9.

Defendants, and each of them, knew or reasonably should have known or expected that their outrageous conduct, threats, intimidation, and words would result in severe emotional, mental and physical damage to Plaintiff.

[CT 109]

14.

Defendants, and each of them, intentionally caused, or recklessly disregarded the probability that said conduct would cause Plaintiff to suffer grievous mental and emotional distress as well as great physical damage to Plaintiff making him sick, sore and lame and causing Plaintiff a nervous breakdown requiring Plaintiff to be hospitalized.

15.

As a proximate result of the intentional and wrongful discriminatory conduct practiced by Defendants, and each of them, as aforesaid, Plaintiff has suffered a nervous breakdown, grievous mental anguish and bodily injury making him sick, sore and lame; as a result Plaintiff has been hospitalized and forced to incur medical and related expenses, the exact amount of which is presently unknown to Plaintiff; Plaintiff will ask leave of the Court to insert said amount at the time of trial.

10.

As a proximate result of the aforesaid intentional conduct of Defendants, and each of them, Plaintiff has suffered, and claims, general damages in the sum of \$500,000.00.

16.

All of the aforesaid acts, conduct and discrimination by Defendants, and each of them, were done deliberately and maliciously and by reason of such deliberate malice Plaintiff asks that punitive damages be assessed against Defendants, and each of them, in the sum of \$500,000.00.

THIRD SEPARATE CAUSE  
OF ACTION

For a third and separate cause of action against Defendants, and each of them, Plaintiff alleges:

[CT 110]

17.

Plaintiff repeats and herein incorporates by reference as though fully set forth, Paragraphs 1, 2, 3, 4, 5, and 6 herein.

18.

That at the time said written Agreement was contracted by and between the aforesaid General

11.

Contractors and the aforesaid Defendant Labor Organizations, Plaintiff was a dues-paying member of all of the aforesaid Labor Organizations; and as such a member was a third party beneficiary of said Agreement in that said Agreement was negotiated for the benefit of Plaintiff.

19.

Plaintiff performed each and every act and thing required to be performed by him in accordance with the terms and conditions of said Agreement.

20.

On or about January 1, 1967, and on numerous occasions between January 1, 1967, and April 1, 1969, Defendants, and each of them, breached said contract by failing to dispatch Plaintiff to various jobs of employment in the manner and procedure required by said Agreement; Defendants, and each of them, further breached said Agreement by failing to dispatch Plaintiff to jobs of employment on a "non-discriminatory basis".

21.

As a proximate result of said breaches of contract, which has prevented Plaintiff from pursuing a livelihood, Plaintiff has suffered grievous mental suffering, anguish and bodily injury, making him sick, sore and lame; as a

12.

result Plaintiff has been forced to incur medical

[CT 111]\*

and related expenses, the exact amount\* of which is presently unknown to Plaintiff; Plaintiff will ask leave of the Court to insert said amount at the time of trial.

As a proximate result of the aforesaid conduct of Defendants, and each of them, Plaintiff has suffered and claims general damages in the sum of \$500,000.00.

FOR A FOURTH SEPARATE  
CAUSE OF ACTION

For a fourth and separate cause of action against Defendants, and each of them, Plaintiff alleges:

22.

Plaintiff repeats and herein incorporates by reference as though fully set forth, Paragraphs 1, 2, 3, 4, 5, and 6.

23.

On or before January 1, 1967, Plaintiff and Defendants, and each of them, entered into a written contract whereby Plaintiff agreed to join said Labor Organizations and to pay monetary dues to said Defendant organizations; pursuant to said written contract Plaintiff agreed to abide by

13.

and did abide by all rules and regulations of said organizations and to follow all rules, directives and procedures concerned with the dispatching of Union members to jobs of employment.

24.

A portion of the aforesaid written contract is entitled "Carpenter's Hiring Hall Procedures"; said document sets forth the same general dispatching procedures as those stated in Paragraph 6 herein; at the time the aforesaid written contract was agreed to by the parties, Defendants, and each of them, in writing and orally, agreed to dispatch Plaintiff solely and exclusively in accordance with the aforesaid Rules of Procedures.

[CT 112]

25.

Plaintiff has performed each and every act and thing required to be performed in accordance with the terms and conditions of said written contract.

26.

On or about January 1, 1967, and on numerous occasions between said date and April 1, 1969, Defendants, and each of them, breached said contract by failing and refusing to make dispatches pursuant to the Rules of Procedure as aforesaid, causing Plaintiff to lose work and to be unable to pursue his livelihood.

14.



27.

As a proximate result of said breaches of contract, which has prevented Plaintiff from pursuing a livelihood, Plaintiff has suffered grievous mental suffering, anguish and bodily injury, making him sick, sore and lame; as a result Plaintiff has been forced to incur medical and related expenses, the exact amount of which is presently unknown to Plaintiff; Plaintiff will ask leave of the Court to insert said amount at the time of trial.

As a proximate result of the aforesaid conduct of Defendants, and each of them, Plaintiff has suffered and claims general damages in the sum of \$500,000.00.

WHEREFORE, Plaintiff prays judgment as follows:

1. \$500,000.00 general damages on the First, Second, Third and Fourth Causes of Action;

2. Medical and related expenses according to proof on all Causes of Action;

3. \$500,000.00 punitive damages on the First and Second Causes of Action;

[CT 113]

4. For costs of suit incurred herein; and

15.

5. For such further relief as the Court may deems just.

COLEMAN, SILVERSTEIN  
& HOBART

By: \_\_\_\_\_  
G. DANA HOBART

[Proof of Service Omitted in Printing]

[CT 127]

DEFENDANTS' DEMURRER

Filed April 4, 1972

[Caption Omitted in Printing]

COME NOW, defendants UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 25; THE LOS ANGELES COUNTY DISTRICT COUNCIL OF CARPENTERS; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; EARL GEORGE DALEY; BENJAMIN FENWICK; JOSEPH WILK; JAMES KEEN, AND KENNETH SCOTT, and demur to plaintiff's First Amended Complaint upon the following grounds:

16.

1. The cause of action set forth in the Complaint does not state facts sufficient to constitute a cause of action.

2. The Court has no jurisdiction of the subject matter of the First Cause of Action in that the matter is exclusively within the jurisdiction of the National Labor Relations Board and the federal courts.

3. The Second Cause of Action set forth in the Complaint does not state facts sufficient to constitute a cause of action

[CT 128]

4. The Court has no jurisdiction of the subject matter of the Second Cause of Action in that the matter is exclusively within the jurisdiction of the National Labor Relations Board and the federal courts.

5. The Third Cause of Action set forth in the Complaint does not state facts sufficient to constitute a cause of action.

6. The Court has no jurisdiction of the subject matter of the Third Cause of Action in that the matter is exclusively within the jurisdiction of the National Labor Relations Board and the federal courts.

7. The Fourth Cause of Action set forth in the Complaint does not state facts sufficient to

constitute a cause of action.

8. The Court has no jurisdiction of the subject matter of the Fourth Cause of Action in that the matter is exclusively within the jurisdiction of the National Labor Relations Board and the federal courts.

DATED: April 3, 1972.

GEFFNER & SATZMAN

BY: BRADLEY TABACH-BANK

Attorneys for Defendants

I hereby certify that this Demurrer is not filed for purposes of delay but that it is filed in good faith and in my opinion the grounds are well taken.

DATED: April 3, 1972.

BRADLEY TABACH-BANK

Attorney for Defendants

[Proof of Service Omitted in Printing]



[CT 190]

ORDER OF SUPERIOR COURT OF  
LOS ANGELES COUNTY

Rendered May 12, 1972

[Caption Omitted in Printing]

In this matter, heretofore  
deemed submitted May 5,  
1972 the Court now makes  
the following order:

Demurrer of defendants

United Brotherhood of

Carpenters and Joiners

of America, Local 25,

The Los Angeles County

District Council of

Carpenters, United

Brotherhood of Carpenters

and Joiners of America,

AFL-CIO, Earl George

Daley, Benjamin Fenwick,

Joseph Wilk, James Keen

and Kenneth Scott, to

First Amended Complaint

(Submitted)

Demurrer to the 1st,  
3rd and 4th causes of  
action sustained without  
leave to amend, pur-  
suant to points and  
authorities filed.

Demurrer to the 2nd  
Cause of action  
overruled.

Alcorn v. Anbro  
Engineering, 2  
C3d 493.

Counsel to give notice.

Copy of this order  
mailed to counsel.

[Proof of Service Omitted in Printing]

[CT 205]

ANSWER TO COMPLAINT

Filed June 20, 1972

[Caption Omitted in Printing]

COME NOW Defendants, UNITED  
BROTHERHOOD OF CARPENTERS & JOINERS  
OF AMERICA, LOCAL 25; LOS ANGELES  
COUNTY DISTRICT COUNCIL OF CARPENTERS  
UNITED BROTHERHOOD OF CARPENTERS  
AND JOINERS OF AMERICA, AFL-CIO; EARL  
GEORGE DALEY, BENJAMIN FENWICK;  
GEORGE WILK; JAMES KEEN; and KENNETH  
SCOTT, answering for themselves alone and no  
other defendants; admit and allege as follows:

1. Defendants deny generally and  
specifically paragraphs 1, 2, 4, 5, 10 and 11  
of Plaintiff's complaint.

2. Answering paragraph 12, Defendants  
deny generally and specifically said paragraph  
as it refers to paragraphs 1, 2, 4, 5, 10 and 11  
of Plaintiff's complaint.

3. Defendants deny generally and  
specifically paragraphs 13, 14, 15 and 16 of  
Plaintiff's complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state facts sufficient to constitute a cause of action. The

[CT 206]\*

Court has no jurisdiction\* over the subject matter in Plaintiff's complaint in that the subject matter is exclusively within the jurisdiction of the National Labor Relations Board and Federal Courts.

THIRD AFFIRMATIVE DEFENSE

The complaint fails to state a cause of action as Plaintiff has failed to exhaust his internal administrative remedies provided by the by-laws of the Los Angeles County District Council of Carpenters and United Brotherhood of Carpenters AFL-CIO.

WHEREFORE, Defendants pray that Plaintiff take nothing by his complaint, that the complaint be dismissed and for such other and further relief as the Court may deem proper.

DATED June 20, 1972.

GEFFNER & SATZMAN  
A Professional Corporation

BY  
BRADLEY TABACH-BANK  
Attorneys for Defendants

[Proof of Service Omitted in Printing]

EXCERPT FROM PLAINTIFF'S  
FIRST SUPPLEMENTAL INTER-  
ROGATORIES TO DEFENDANTS

Propounded November 5, 1969

[Caption Omitted in Printing]

[CT 478]

7. Do you contend that Mr. Hill has failed to take certain procedural steps within the Union framework which you contend to be conditions precedent to his right to bring this legal action?

a. If yes, please set forth in

[CT 479]\*

detail, each and every\* procedural step you contend was omitted by Mr. Hill.

b. If yes, please state or cite the authority which you contend supports your position that Mr. Hill failed to take certain necessary procedural steps.

c. If yes, exactly which steps do you contend are prerequisites to Mr. Hill's filing this legal action.

EXCERPT FROM ANSWER OF  
DEFENDANT E.G.DALEY TO  
FIRST SUPPLEMENTAL  
INTERROGATORIES

---

[Caption Omitted in Printing]

[CT 483]

7. Yes

(a) Mr. Hill failed to file at any time charges with the Los Angeles County District Council of Carpenters against myself as he is entitled to do under the Constitution of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the By-laws of the Los Angeles County District Council of Carpenters.

(b) The Constitution of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, the By-laws of the Los Angeles County District Council of Carpenters, and the hiring procedures of the Los Angeles County District Council of Carpenters, Local 25.

(c) Mr. Hill was required to file charges against me that I discriminated against him and did not fulfill my obligations as a union member and officer of Local 25.

JURY INSTRUCTIONS GIVEN

[CT 498]

BAJI 1.00

RESPECTIVE DUTIES OF JUDGE  
AND JURY

Ladies and Gentlemen of the Jury:

It is my duty to instruct you in the law that applies to this case and you must follow the law as I state it to you.

As jurors it is your exclusive duty to decide all questions of fact submitted to you and for that purpose to determine the effect and value of the evidence.

You must not be influenced by sympathy, prejudice or passion.

[CT 499]

BAJI 1.01

INSTRUCTIONS TO BE CON-  
SIDERED AS A WHOLE

It in these instructions any rule, direction or idea is repeated or stated in varying ways, no emphasis thereon is intended by me and none must be inferred by you. For that reason you



are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and are to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

[CT 500]

#### BAJI 1.02

##### STATEMENTS OF COUNSEL-- EVIDENCE STRICKEN OUT-- INSINUATIONS OF QUESTIONS

You must not consider as evidence any statement of counsel made during the trial; however, if counsel for the parties have stipulated to any fact, or any fact has been admitted by counsel, you will regard that fact as being conclusively proved as to the party or parties making the stipulation or admission.

As to any question to which an objection was sustained, you must not speculate as to what the answer might have been or as to the reason for the objection.

You must not consider for any purpose any offer of evidence that was rejected, or any evidence that was stricken out by the court; such matter is to be treated as though you had never

known of it.

You must never speculate to be true any insinuation suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

[CT 501]

#### BAJI 1.20

##### "PLAINTIFF" AND "DEFENDANT" APPLIES TO EACH SIMILARLY DESIGNATED

The words "plaintiff" and "defendant", as used in these instructions, apply to each plaintiff and to each defendant, respectively, except as you may be otherwise instructed.

[CT 502]

#### BAJI 2.00

##### DIRECT AND CIRCUMSTANTIAL EVIDENCE--INFERENCES

Evidence may be either direct or circumstantial. It is direct evidence if it proves a fact, without an inference, and which in itself, if true, conclusively establishes that fact. It is circumstantial evidence if it proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

[CT 503]

BAJI 2.01

WEIGHING CONFLICTING TESTIMONY

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against the testimony of a lesser number or other evidence, which appeals to your mind with more convincing force. The testimony of one witness worthy of belief is sufficient for the proof of any fact. This does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of the evidence.

[CT 504]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

\*BAJI 2.02

FAILURE TO PRODUCE AVAILABLE STRONGER EVIDENCE

If weaker and less satisfactory evidence is offered by a party, when it was within his power to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.

[CT 505]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

\*BAJI 2.03

WILFUL SUPPRESSION OF EVIDENCE

If you should find that a part wilfully suppressed evidence in order to prevent its being presented in this trial, you may consider such suppression in determining what inferences to draw from the evidence or facts in the case against him.



[CT 506]

BAJI 2.06

DEPOSITION TESTIMONY

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

[CT 507]

INTERROGATORIES

During the course of the trial you have heard reference made to the word "interrogatory". An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. You are to consider interrogatories and the answers thereto the same as if the questions had been asked and answered here in court.

[CT 508]

BAJI 2.20

CREDIBILITY OF WITNESS

You are the sole and exclusive judges of the credibility of the witnesses who have testified in this case.

In determining the credibility of a witness you may consider any matter that has a tendency in reason to prove or disprove the truthfulness of his testimony, including but not limited to the following:

His demeanor while testifying and the manner in which he testifies;

The character of his testimony;

The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies;

The extent of his opportunity to perceive any matter about which he testifies;

His character for honesty or veracity or their opposites;

The existence or nonexistence of a bias, interest, or other motive;

A statement previously made by him that is consistent with his testimony;

A statement made by him that is inconsistent with any part of his testimony;

The existence or nonexistence of any fact testified to by him;

His attitude toward the action in which he testifies or toward the giving of testimony;

His admission of untruthfulness.

[CT 509]

BAJI 2.21

DISCREPANCIES IN TESTIMONY

Discrepancies in a witness's testimony or between his testimony and that of others [if there were any] do not necessarily mean that the witness should be discredited. Failure of recollection is not uncommon. It is a fact, also, that two persons witnessing an incident or a transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

[CT 510]

BAJI 2.22

WITNESS WILFULLY FALSE

A witness false in one part of his testimony is to be distrusted in others; that is to say, you may reject the whole testimony of a witness who wilfully has testified falsely as to a material point, unless, from all the evidence, you shall believe that the probability of truth favors his testimony in other particulars.

[CT 511]

BAJI 2.25

EXTRAJUDICIAL ADMISSIONS--  
CAUTIONARY INSTRUCTION

Evidence of the oral admissions of a party, other than his own testimony in this trial, ought to be viewed by you with caution.

[CT 512]

BAJI 2.40

EXPERT TESTIMONY--  
QUALIFICATIONS OF EXPERT

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his opinion as an expert as to any matter in which he is skilled. In determining the weight to be given such opinion you should consider the qualifications and credibility of the expert and the reasons given for his opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

[CT 513]

BAJI 2.42

### HYPOTHETICAL QUESTIONS

Questions have been asked in which an expert witness was asked to assume that certain facts were true and to give an opinion based upon that assumption. This is called a hypothetical question. If any fact assumed in the question has not been established by the evidence, you should determine the effect of that omission upon the value of the opinion.

[CT 514]

BAJI 2.43

### STATEMENTS MADE BY PATIENT TO PHYSICIAN

Testimony by a physician of statements made to him by a patient for the purpose of diagnosis or treatment may be considered by you not to show the truth of the facts stated but to show the information upon which the physician based his opinions; except that the patient's statements of his then existing state of mind, emotion, or physical sensation, [and any statements made by him which constituted an admission of a fact or facts adverse to his interest] may be considered by you as evidence of the truth of the matter stated.

[CT 515]

(Two Pages) BAJI 2.60 (Page One)

### BURDEN OF PROOF AND PRE- PONDERANCE OF EVIDENCE

In this action, the plaintiff has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following issues:

1. The defendants intentionally and by outrageous conduct inflicted upon plaintiff severe emotional distress
2. That the said conduct of the defendants was the proximate cause of injury and damage to the plaintiff and
3. The nature and extent of the injuries and damages claimed to have been so suffered.

[CT 516]

(Two Pages) BAJI 2.60 (Page Two)

By a preponderance of the evidence is meant such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth. In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue preponderates, then your finding upon that issue must be against the party who

had the burden of proving it.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

[CT 517]

BAJI 3.76

#### LEGAL CAUSE-DEFINITION OF

A legal cause of an injury is a cause which is a substantial factor in bringing about the injury.

[CT 518]

#### PLAINTIFF'S SPECIAL INSTRUCTION NO.

An agent is one who represents another, called the principal, in dealing with third persons.

California Civil Code Section 2295

[CT 519]

#### PLAINTIFF'S SPECIAL INSTRUCTION NO.

The determination of an agency relationship is not dependent upon proof of compensation, but it may be shown by conduct of the parties.

Vargas vs. Ruggiero, 197 Cal.App.2d 709,  
17 Cal.Rptr. 568

[CT 520]

#### PLAINTIFF'S SPECIAL INSTRUCTION NO.

You are instructed that whether an agency relationship exists is a question of fact to be determined from relevant written documents and the conduct of the parties in evidence. It may be created formally or informally. The right to control is the primary test of agency. It is not necessary that the principal exercise its right of control...

Housewright vs. Pacific Far East Lines Inc., 222 Cal.App.2d 306, 40 Cal.Rptr. 208

Malloy vs. Fong, 101 Cal.App. 232 P.2d 241

[CT 521]

BAJI 14.00

#### COMPENSATORY DAMAGES-- PERSONAL INJURY AND PROPERTY DAMAGE--INTRODUCTORY

If, under the court's instructions, you find that plaintiff is entitled to a verdict against defendant, you must then award plaintiff damages in an amount that will reasonably compensate him for each of the following elements of claimed loss or harm, provided that you find it was suffered by him and proximately caused by the act or omission



upon which you base your finding of liability.  
The amount of such award shall include:

[CT 522]

BAJI 14.10

MEASURE OF DAMAGES--  
PERSONAL INJURY--  
EXPENSES INCURRED

The reasonable value of medical [hospital and nursing] care, services and supplies reasonably required and actually given in the treatment of the plaintiff

[CT 523]

BAJI 14.13

MEASURE OF DAMAGES--  
PERSONAL INJURY--  
PAIN AND SUFFERING

Reasonable compensation for any pain, discomfort, fears, anxiety and other mental and emotional distress suffered by the plaintiff and of which his injury was a proximate cause.

No definite standard is prescribed by law by which to fix reasonable compensation for pain and suffering. Nor is the opinion of any witness required as to the amount of such reasonable compensation. [Furthermore, the argument of counsel as to the amount of damages

is not evidence of reasonable compensation.] In making an award for pain and suffering you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in the light of the evidence.

[CT 524]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

Damages may be awarded for the suffering of severe emotional distress caused by intentional and outrageous conduct.

Vargas vs. Ruggiero, 197 Cal. App. 2d 709, 17 Cal. Rptr. 568

Fletcher vs. Western National Life Insurance Company 10, Cal. App. 2d 376, 89 Cal. Rptr. 78

[CT 525]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

The nature of the conduct which allegedly caused severe emotional distress may consist in acts alone, or acts accompanied by words, or it may consist of words alone,

Emdem vs. Vitz, 88 Cal. App. 2d 313, 198 P. 2d 696 (hearing denied)  
Bowden vs. Spiegel, Inc., 96 Cal. App. 2d 793, 216 P. 2d 571.



[CT 526]

BAJI 14.65

DAMAGES--AGGRAVATION OF  
PREEXISTING CONDITION

A person who has a condition or disability at the time of an injury is not entitled to recover damages therefor. However, he is entitled to recover damages for any aggravation of such preexisting condition or disability proximately resulting from the injury.

This is true even if the person's condition or disability made him more susceptible to the possibility of ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury.

Where a pre-existing condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional injury caused by the aggravation.

Defendants are liable only for that emotional distress actually caused by their own conduct.

[CT 527]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

"Severe emotional distress" as will permit you to find for a Plaintiff, must in fact exist and it must be severe; it may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worried. [Sic.]

Fletcher vs. Western National Life  
Insurance Company 10, Cal. App. 2d 376,  
89 Cal. Rptr. 78, 90  
Crisci vs. Sec. Ins. Co., 66, Cal. 2d  
425, 58 Cal. Rptr. 13

[CT 528]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

"Severe" means, in this context, substantial or enduring, as distinguished from trivial or transitory. It must be of such substantial quantity or enduring quality that no reasonable man in a civilized society should be expected to endure it. Liability does not extend to mere insults, indignities, annoyances, petty or other trivialities.

Fletcher vs. Western National Life  
Insurance Company 10, Cal. App. 2d  
376, 89 Cal. Rptr. 78, 90, 91

[CT 529]

DEFENDANTS' REQUESTED  
SPECIAL INSTRUCTION

No. \_\_\_\_\_

In the event you find that the plaintiff is entitled to a verdict, you are not to consider any award regarding any actual damages regarding the plaintiff's emotional and mental distress as may or may not exist after April 17th, 1969.

[CT 530]

DEFENDANTS' REQUESTED  
SPECIAL INSTRUCTION

No. \_\_\_\_\_

In the event you should find that the plaintiff is entitled to a verdict, you are not to consider any loss of wages or salaries by the plaintiff as the plaintiff has not made any claim for such loss in the complaint.

[CT 531]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

There has been received in evidence the fact that Plaintiff filed a complaint within the National Labor Relations Board, a governmental agency, and received an award covering wages he would have earned on the Dinwiddy-Simpson job had he been dispatched on May 1, 1967.

The National Labor Relations Board is empowered by law to render awards to compensate for lost wages where it finds that a claimant was unreasonably denied employment in violation of certain applicable federal laws.

The Plaintiff in this action charges the intentional infliction [sic] of severe emotional distress and seeks damages for pain and suffering, for resulting medical expenses incurred, and for punitive damages. The National Labor Relations Board has limited jurisdiction which does not include the authority to render awards for any of the just-mentioned items of damage.

[CT 532]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

You are instructed that a trade union acts through and is bound by the acts of its officers.

Coates vs. Construction and General  
Laborers Local 185, (1971) 93 Cal.  
Rptr. 639, 642, 15 Cal. App. 3d 908,  
re hearing denied

[CT 533]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

For Plaintiff to prevail in this action against Defendants Local 25 or the Los Angeles District Council of Carpenters it is necessary for the Plaintiff to establish by a preponderance

of the evidence that the agent was acting within the scope of his employment or authority at the time the complained of acts were committed. To determine this issue you should consider (a) whether his conduct was authorized by his principal, either expressly or impliedly, (b) whether his conduct occurred during the performance of services for the benefit of the principal, either directly or indirectly, (c) whether his conduct, even though not expressly or impliedly authorized, was an incidental event connected with his assigned work.

Coates vs. Construction and General Laborers Local 185, (1971) 93 Cal. Rptr. 639, 642, 15 Cal. App. 3d 908, re hearing denied

[CT 534]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant Los Angeles District Council of Carpenters has been sued on the theory that it was the principal and that Defendants, Daley, Wilk and Fenwick were its agents.

If you determine that Defendant Daley was the agent of Defendant Los Angeles District Council of Carpenters and was acting in the scope of his authority at the time the conduct complained of occurred and if you find that Defendant Daley is liable, then Defendant

Los Angeles District Council of Carpenters is also liable. But if you find Defendant Daley is not liable, then Defendant Los Angeles District Council of Carpenters is not liable.

However, if you determine that Defendant Daley is liable but was not then the agent of Defendant Los Angeles District Council of Carpenters or was not acting within the scope of his authority at such time, then you must find that Los Angeles District Council of Carpenters is not liable.

[CT 535]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant Los Angeles District Council of Carpenters has been sued on the theory that it was the principal and that Defendants Daley, Wilk and Fenwick were its agents.

If you determine that Defendant Wilk was the agent of Defendant Los Angeles District Council of Carpenters and was acting in the scope of his authority at the time the conduct complained of occurred, and if you find that Defendant Wilk is liable, then Defendant Los Angeles District Council of Carpenters if [sic] also liable. But, if you find Defendant Wilk is not liable, then Defendant Los Angeles District Council of Carpenters is not liable.



However, if you determine that Defendant Wilk is liable but was not then the agent of Defendant Los Angeles District Council of Carpenters or was not acting within the scope of his authority at such time, then you must find that Los Angeles District Council of Carpenters is not liable.

[CT 536]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant Los Angeles District Council of Carpenters has been sued on the theory that it was the principal and that Defendants Daley, Wilk and Fenwick were its agents.

If you determine that Defendant Fenwick was the agent of defendant [sic] Los Angeles District Council of Carpenters and was acting in the scope of his authority at the time the conduct complained of occurred, and if you find that Defendant Fenwick is liable, then Defendant Los Angeles District Council of Carpenters is also liable. But, if you find Defendant Fenwick is not liable, then Defendant Los Angeles District Council of Carpenters is not liable.

However, if you determine that Fenwick is liable but was not then the agent of Defendant Los Angeles District Council of Carpenters or was not acting within the scope of his authority at such time, then you must find that Los Angeles District Council of Carpenters is not liable.

[CT 537]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant Local 25 has been sued on the theory that it was the principal and Defendants Daley, Wilk and Fenwick were its agents.

It has been stipulated that Daley, Wilk and Fenwick are agents of Carpenters Local 25.

If you determine that Defendant Daley was acting in the scope of his employment at the time the conduct complained of occurred, and if you find that Defendant Daley is liable, then Local 25 is also liable. But, if you find the Defendant Daley is not liable, then Local 25 is not liable.

However, if you determine that Defendant Daley is liable but was not acting within the scope of his employment at such time, then you must find that Local 25 is not liable.

[CT 538]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant Local 25 has been sued on the theory that it was the principal and Defendants Daley, Wilk and Fenwick were its agents.

It has been stipulated that Daley, Wilk and Fenwick are agents of Carpenters Local 25.

If you determine that Defendant Wilk was acting in the scope of his employment at the time the conduct complained of occurred, and if you find that Defendant Wilk is liable, then Local 25 is also liable. But, if you find that Defendant Wilk is not liable, then Local 25 is not liable.

However, if you determine that Defendant Wilk is liable but was not acting within the scope of his employment at such time, then you must find that Local 25 is not liable.

[CT 539]

#### PLAINTIFF'S AND DEFENDANTS' JOINTLY DRAWN INSTRUCTION NO.

The Defendant Local 25 has been sued on the theory that it was the principal and Defendants Daley, Wilk and Fenwick were its agents.

It has been stipulated that Daley, Wilk and Fenwick are agents of Carpenters Local 25.

If you determine that Defendant Fenwick was acting in the scope of his employment at the time the conduct complained of occurred, and if you find that Defendant Fenwick is liable, then Local 25 is also liable. But, if you find that Defendant Fenwick is not liable, then Local 25 is not liable.

However, if you determine that Defendant Fenwick is liable but was not acting within the scope of his employment at such time, then you must find that Local 25 is not liable.

[CT 540]

\*BAJI 14.71

#### PUNITIVE DAMAGES - RECOVERY OF AND MEASURE

If you find that Plaintiff has suffered actual damage as a proximate result of the acts of Defendants on which you base your finding of liability, you may in your sole discretion award additional damages against Defendants as punitive or exemplary damages, for sake of example and by way of punishing Defendants if, and only if, you find by a preponderance of the evidence that said Defendants have been guilty of oppression or actual malice.

["Malice" means a motive and willingness to vex, harass, annoy, or injure another person. Malice may be shown by direct evidence of declarations of hatred or ill-will or it may be inferred from acts and conduct, such as by showing that the Defendants' conduct was wilful, intentional, and done in reckless disregard of its possible results.]

The law provides no fixed standard as to the amount of such punitive damages, but leaves the amount to the jury's sound [sic] discretion,

exercised without passion or prejudice.

[CT 541]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

A principal may be held in punitive damages for the wilfull and malicious acts of its agent when it has knowledge of the conduct of such conduct, and it approves such conduct. Approval of the conduct may take the form of a failure to act when in a position to remedy the situation. Maintaining the agent in the service of the principal alone, does not make the principal liable for punitive damages, but it is an indication of the principal's approval of the complained of conduct and when considered with other acts of the principal may, in your discretion, make the principal liable in punitive damages.

Coates vs. Construction and General Laborers Local 185, (1971) 93 Cal. Rptr. 639, 642, 15 Cal. App. 3d 908, re hearing denied.

[CT 542]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

In assessing punitive damages, if any, you may consider the character of the Defendants' acts, the nature and extent of the harm actually caused the Plaintiff, and the wealth of the Defendant.

Coates vs. Construction and General Laborers Local 185, (1971) 93 Cal. Rptr. 639, 642, 15 Cal. App. 3d 908, re hearing denied.

[CT 543]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

One of the factors you may consider in determining the presence or absence of malice or oppression on the part of the defense is the relation of authority and the duties owed, if any, by the Defendants toward the Plaintiff.

Another factor you may also consider is whether the Defendants were aware, or reasonably should have been aware of the Plaintiff's particular susceptibility, if any, to emotional distress.

Alcorn vs. Ambro Engineering Company, 2 Cal. 3d 493, 86 Cal. Rptr. 88, 90, 91

Fletcher vs. Western National Life Insurance Company 10, Cal. App. 2d 376, 89 Cal. Rptr. 78, 91, 93.

[CT 544]

BAJI 15.02

EACH DEFENDANT ENTITLED TO SEPARATE CONSIDERATION

Although there is more than one defendant in this suit, it does not follow from the fact alone that if one is liable [all] are liable. Each defendant is entitled to a fair and separate consideration of his own defense and is not to be



prejudiced by your decision as to the other[s].  
The instructions govern the case as to each  
defendant so far as they are applicable to him,  
unless otherwise stated.

You will decide each defendant's case  
separately.

[CT 545]

BAJI 15.03

CONTRIBUTORY TORT-FEASORS--  
DAMAGES NOT APPORTIONED

If you find that plaintiff is entitled to  
recover against more than one defendant, you  
must return a verdict in a single sum against  
the defendants whom you find to be liable.

[CT 546]

BAJI 15.20

JURY NOT TO TAKE CUE FROM  
JUDGE

I have not intended by anything I have  
said or done, or by any questions that I may  
have asked, to intimate or suggest how you  
should decide any questions of fact submitted  
to you, or that I believe or disbelieve any witness.

If anything I have done or said has seemed  
so to indicate, you will disregard it and form your  
own opinion.

[CT 547]

BAJI 15.22

ALL INSTRUCTIONS NOT  
NECESSARILY APPLICABLE

The court has given you instructions  
embodying various rules of law to help guide you  
to a just and lawful verdict. Whether some of  
these instructions will apply will depend upon  
what you find to be the facts. The fact that I  
have instructed you on various subjects in this  
case [including that of damages] must not be  
taken as indicating an opinion of the court as to  
what you should find to be the facts or as to  
which party is entitled to your verdict.

[CT 548]

BAJI 15.30

JURORS TO DELIBERATE

When you go to the jury room it is your  
duty to discuss the case for the purpose of  
reaching an agreement if you can do so.

Each of you must decide the case for  
yourself, but should do so only after a considera-  
tion of the case with the other jurors.

You should not hesitate to change an  
opinion if you are convinced it is erroneous.  
However, you should not be influenced to decide

any question in a particular way simply because a majority of the jurors, or any of them, favor such a decision.

[CT 549]

BAJI 15.31

HOW JURORS SHOULD APPROACH  
THEIR TASK

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

[CT 550]

EACH JUROR SHOULD DELIBERATE  
AND VOTE ON EACH ISSUE TO BE  
DECIDED

Each of you should deliberate and vote on each issue to be decided.

However, before you may return a verdict to the court, at least nine jurors must agree on it

in its final and complete form, so that each of those nine or more may be able to state truthfully that the verdict is his.

[CT 551]

BAJI 15.33

CHANCE OR QUOTIENT VERDICT  
PROHIBITED

The law forbids you to determine any issue in this case by chance. Thus, if you determine that a party is entitled to recover, you must not arrive at the amount of damages to be awarded by agreeing in advance to take the independent estimate of each juror of the amount to be awarded, then to total such estimates, divide such total by twelve and to make such resulting average the amount of your award.

[CT 552]

BAJI 15.50

CONCLUDING INSTRUCTION

You shall now retire and select one of your number to act as foreperson who will preside over your deliberations. As soon as nine or more of you shall have agreed upon a verdict, you shall have it signed and dated by your foreperson and then shall return with it to this room.

JURY INSTRUCTIONS REFUSED OR WITHDRAWN

[CT 553]

BAJI 13.01

SCOPE OF AUTHORITY-MEANING

It is not necessary that a particular act or failure to act be expressly authorized by the principal to bring it within the scope of the agent's [authority]. Such conduct is within the scope of his [authority] if it occurs while the agent is engaged in the duties which he was employed to perform and relates to those duties. Conduct for the benefit of the principal which is incidental to, customarily connected with or reasonably necessary for the performance of an authorized act is within the scope of the agent's [authority].

[CT 554]

BAJI 13.06

CONTESTED ISSUE OF IMPUTATION  
TO DEFENDANT--BOTH PRINCIPAL  
AND AGENTS SUED

The defendant Local #25 has been  
(principal)  
sued on the theory that it was the principal and  
that the defendants Daley, Wilks and Fenwick  
(agent)  
were its agents. It has been stipulated that  
Daley, Wilks and Fenwick were agents of [sic.]

If you determine that defendants  
Daley, Wilks or Fenwick, or any of them [was  
(agent)  
acting within the scope of his employment] at the  
time of the events out of which the accident  
occurred, and if you find that defendant  
\_\_\_\_\_ is liable, then both  
\_\_\_\_\_ (agent)  
defendants are liable. But if you find that  
defendant \_\_\_\_\_ is not liable  
\_\_\_\_\_ (agent)  
then neither defendant is liable.

However, if you determine that defendant  
\_\_\_\_\_ is liable but [was not  
(agent)  
then the agent of defendant \_\_\_\_\_ ]  
(principal)  
[or] [was not acting within the scope of his  
employment] at such time, then you must find  
that the defendant \_\_\_\_\_ is not liable.  
\_\_\_\_\_ (principal)

[CT 555]

BAJI 13.03

DIRECTED IMPUTATION AGAINST  
A DEFENDANT PRINCIPAL--BOTH  
PRINCIPAL AND AGENT SUED--  
NO ISSUE AS TO AGENCY OR  
SCOPE OF EMPLOYMENT



The defendants are sued as principal and agent, the defendants International District and  
(principal)

Local as the principal and the defendants  
Daley, Wilk and Fenwick as their agents.  
(agent)

If you determine that either of defendant  
agents is liable, then you must  
(agent)  
find that defendant  
(principal)  
is also liable. However, if you determine that  
defendant is not liable,  
(agent)  
then you must find that defendant  
is not liable. (principal)

[CT 556]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant United Brotherhood of  
Carpenters and Joiners of America has been  
sued on the theory that it was the principal and  
that Defendants Daley, Wilk and Fenwick were  
its agents.

If you determine that Defendant Fenwick  
was the agent of Defendant United Brotherhood  
of Carpenters and was acting in the scope of his  
authority at the time the conduct complained of  
occurred, and if you find that Defendant Fenwick

is liable, then Defendant, United Brotherhood of  
Carpenters is also liable. But, if you find  
Defendant Fenwick is not liable, then Defendant  
United Brotherhood of Carpenters is not liable.

However, if you determine that Defendant  
Fenwick is not liable but was not then the agent  
of Defendant United Brotherhood of Carpenters  
or was not acting within the scope of his authority  
at such time, then you must find that United  
Brotherhood of Carpenters is not liable.

[CT 557]

PLAINTIFF'S AND DEFENDANTS' JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant United Brotherhood of  
Carpenters and Joiners of America has been  
sued on the theory that it was the principal and  
that Defendants Daley, Wilk and Fenwick were  
its agents.

If you determine that Defendant Wilk was  
the agent of Defendant United Brotherhood of  
Carpenters and was acting in the scope of his  
authority at the time the conduct complained of  
occurred, and if you find that Defendant Wilk is  
liable, then Defendant United Brotherhood of  
Carpenters is also liable. But, if you find  
Defendant Wilk is not liable, then Defendant  
United Brotherhood of Carpenters is not liable.

However, if you determine that Defendant  
Wilk is liable but was not then the agent of



Defendant United Brotherhood of Carpenters or was not acting within the scope of his authority at such time, then you must find that United Brotherhood of Carpenters is not liable.

[CT 558]

PLAINTIFF'S AND DEFENDANT'S JOINTLY  
DRAWN INSTRUCTION NO.

The Defendant United Brotherhood of Carpenters and Joiners of America has been sued on the theory that it was the principal and that Defendants Daley, Wilk and Fenwick were its agents.

If you determine that Defendant Daley was the agent of Defendant United Brotherhood of Carpenters and was acting in the scope of his authority at the time the conduct complained of occurred, and if you find that Defendant Daley is liable, then Defendant United Brotherhood of Carpenters is also liable. But, if you find Defendant Daley is not liable, then Defendant United Brotherhood of Carpenters is not liable.

However, if you determine that Defendant Daley is liable but was not then the agent of Defendant United Brotherhood of Carpenters or was not acting in the scope of his authority at such time, then you must find that United Brotherhood of Carpenters is not liable.

[CT 559]

DEFENDANTS' REQUESTED SPECIAL  
INSTRUCTION NO. \_\_\_\_\_

You are directed to enter a verdict for the United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

[CT 560]

DEFENDANTS' REQUESTED SPECIAL  
INSTRUCTION NO. \_\_\_\_\_

In determining whether the Plaintiff has satisfied the burden of proof regarding liability of any defendants in this case, you are not to consider any evidence regarding discrimination concerning employment opportunities or hiring either on the basis of the general dispatching procedures of the Defendants Carpenters Union Local 25, or its business agents, or regarding any operation of the dispatching procedures concerning the Plaintiff.

Note:

The above instruction is based on the Rule of Pre-emption that all matters involving dispatching procedures, hiring and termination regarding employees and members of the Carpenters Union concerning any contractors or employers in interstate commerce, a matter within the exclusive jurisdiction of the National Labor Relations Board and the Federal Courts and the State Courts, including any jury deliberations are without jurisdiction in this matter. [Sic.]

[CT 561]

DEFENDANTS' REQUESTED SPECIAL  
INSTRUCTION NO. \_\_\_\_\_

In determining whether the Plaintiff has satisfied the burden of proof, you are not to consider the general procedures and practices of the hiring hall of Carpenters Union Local 25, or any of its business agents. The only evidence you are to consider are evidence relating to the Plaintiffs individually regarding the alleged act of discrimination concerning his employment.[Sic.]

Note:

The above instruction is offered as an alternative to the previously offered instruction on pre-emption as the general practices of the hiring hall of the Carpenters Union is a matter under the doctrine of pre-emption within the exclusive jurisdiction of the National Labor Relations Board and the Federal Courts. In determining any liability regarding an intentional act under California law, the State Court including jury deliberation cannot consider general practices of a Carpenters Union hiring hall but can only consider individual acts of discrimination that relate to the Plaintiff concerning any intentional infliction of emotional distress. [Sic.]

(CT 562)

PLAINTIFF'S SPECIAL INSTRUCTION NO.

Oppression, as used in these instructions is defined as an unjust or cruel exercise of

authority or power subjecting the recipient to unreasonable hardship.

Roth vs. Shell Oil Company, 185 Cal.  
App.2d 676, 8 Cal.Rptr. 514

Baker vs. Peck, 1 Cal.App.2d 231,  
36 P.2d 404

[CT 563]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

Malice is defined as a wish to vex, annoy or injure another person, and may be proved by direct evidence of the evil motive and intent or by legitimate inferences to be drawn from the surrounding facts and circumstances in evidence.

Fletcher vs. Western National Life  
Insurance Company, 10 Cal.App.3d 376,  
89 Cal.Rptr. 78

[CT 564]

DEFENDANTS' REQUESTED SPECIAL  
INSTRUCTION NO. \_\_\_\_\_

If you find that any emotional distress or disturbance of the Plaintiff was not actually caused by any of the course of conduct of the individual defendants, but was in fact caused by other incidents, events or circumstances or by the plaintiff's own actions, you must likewise bring in a verdict for all defendants.

[CT 565]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

In the event you should find the Plaintiff is entitled to a verdict you should award Plaintiff such an amount as will compensate him reasonably for all detriments suffered by him and of which Defendants' conduct was the actual cause.

In arriving at the amount of the award, if any, you shall consider any actual damage which the Plaintiff has proved, and also such sum as will compensate him reasonably for any fears anxiety and other mental and emotional distress, if any, suffered by him and proximately resulting from the conduct in question.

Fletcher vs. Western National Life Insurance Company, 10 Cal. App. 2d 376, 89 Cal. Rptr. 78, 97

[CT 566]

DEFENDANTS' REQUESTED SPECIAL INSTRUCTION NO. \_\_\_\_\_

You are instructed that the Plaintiff has failed to meet the burden of proof and you must find for the Defendants, unless you find that the individual Defendants committed acts that are considered as extreme and outrageous conduct intentionally or recklessly causing severe emotional distress to the Plaintiff. In this regard the law intervenes only where the distress

inflicted is so severe that no reasonable man could be expected to endure it. The intensity and duration of this distress are factors to be considered in its severity. In this connection, "severe" means substantial or enduring as distinguished from trivial or transitory. If you find trivial emotional distress only, you are to find for the Defendants as complete emotional tranquility is seldom obtainable and some degree of transient and trivial emotional distress is a part of the price of living among people. In this regard, the Defendants are liable only where the conduct has been so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community. The reliability of the Defendants regarding any of their acts should not extend to mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. The Plaintiff in our society and within the context of his occupation and associates as a construction worker, must necessarily be expected and required to be hardened to a certain amount of rough language and to occasional acts that are definitely inconsiderate and unkind:

See Golden v. Dungan, 20 CA 3rd 295  
Fletcher v. Western National Life Ins. Co., 10 CA 3rd 376  
Alcorn v. Ambro Engineering Inc., 2 C. 3rd 493



[CT 567]

PLAINTIFF'S SPECIAL INSTRUCTION NO.

In California the principal is liable for the wilful or malicious acts of its agent who is acting in the scope of his employment.

Kaufman vs. Brown, 93 Cal. App. 2d 508, 209 P. 2d 156

Weir vs. Continental Oil Company, 5 Cal. App. 2d 714, 43 P. 2d. 375

Gudger vs. Manton, 21 Cal. 2d 537, 134 P. 2d 217

[CT 568]

BAJI 13.00

AGENT--DEFINITION OF

One is the agent of another person at a given time if he is authorized to act for or in place of such person. [One may be an agent although he receives no payment for his services.] For the purposes of this trial, the term "agent" includes servants and employees and the term "principal" includes employers.

[CT 569]

BAJI 1.11

"SUBJECT TO LIABILITY"--  
MEANING OF

The words "subject to liability", as used in these instructions, mean that [in the absence of certain exceptions or defenses as to which you will be instructed] a defendant is liable for another's injury proximately caused by such defendant's conduct.



[CT 570]

WILLIAM G. SHARP, County Clerk	FILED Date February 3, 1973
Entered Book Page	WILLIAM G. SHARP, County Clerk
Feb 5 '73 6798 358	Vera C. Chappelle Deputy

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

RICHARD T HILL	Case Number
Plaintiff(s)	951866
vs	
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ET AL	JUDGMENT ON VERDICT IN OPEN COURT (LONG FORM)
Defendant(s)	

This action came on regularly for trial on December 11, 1972; in Department 68 of the above entitled Court, the Honorable Robert W. Kenny Judge presiding; the plaintiff(s) appearing by attorney G. Dana Hobart and the defendant(s) appearing by attorney Leo Geffner of Geffner & Satzman

A jury of 12 persons was regularly impaneled and sworn to try the action. Witnesses on the part of the plaintiff(s) and the defendant(s) were sworn and examined. After hearing the evidence, the argument of counsel, and instructions of the Court, the jury retired to consider of their verdict, and subsequently returned into Court, and being called answered to their names and duly rendered their verdict in writing in words and figures as follows, to-wit:

"TITLE OF COURT AND CAUSE" We, the jury in the above entitled action, find for the plaintiff, Richard T. Hill, and against defendants Earl George Daley, and United Brotherhood of Carpenters and Joiners of America, Local 25 and Los Angeles District Council of Carpenters, and assess damages in the sum of \$7,500.00

We further assess punitive damages against said defendants in the sum of \$175,000.00;

We further find for defendants Joseph Wilk, Ben Fenwick, and against the plaintiff, Richard T. Hill.

Dated February 2, 1973 Charles C. Schutz,  
Foreman

JUDGMENT ON VERDICT IN OPEN  
COURT

[CT 571]

WHEREFORE, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that said plaintiff, Richard T. Hill, recover nothing by reason of his complaint against the defendants, Joseph Wilk and Ben Fenwick, and that the defendants, Joseph Wilk and Ben Fenwick, have and recover from said plaintiff, Richard T. Hill, costs and disbursements amounting to the sum of \$\_\_\_\_\_.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged, and decreed that said plaintiff, Richard T. Hill, have and recover from the defendants Earl George Daley, United Brotherhood of Carpenters and Joiners of America, Local 25, and Los Angeles District Council of Carpenters, compensatory damages in the sum of \$7,500 with interest thereon at the rate of seven per cent per annum from the date of the verdict until paid together with costs and disbursements amounting to the sum of \$\_\_\_\_\_.

Further, that said plaintiff, Richard T. Hill, have and recover from said defendants, Earl George Daley, United Brotherhood of Carpenters and Joiners of America, Local 25, and Los Angeles District Council of Carpenters, punitive damages in the sum of \$175,000.000 with interest thereon at the rate of seven per cent per annum from the date of the verdict until paid together with costs and disbursements amounting to the sum of \$4,607.31 .

[CT 581]

NOTICE OF MOTION FOR  
NEW TRIAL

Filed February 13, 1973  
[Caption Omitted in Printing]

To Richard T. Hill, plaintiff and to G. Dana Hobart, his attorney:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the defendants, United Brotherhood of Carpenters and Joiners of America, Local 25, the Los Angeles County District Council of Carpenters and E.G. Daley, defendants in the above matter, intend to and will move the Court at a time to be set by the Court, in Department 68, for an order granting a new trial.

The motion will be made upon the following grounds:

1. Irregularity in the proceedings of the Court and the jury and abuse of discretion which prevented the defendants from having a fair trial.
2. Excessive damages.
3. Insufficiency of the evidence to justify the verdict and the verdict is against the law.

4. Error in law occurring at the trial

[CT 582]\*

and excepted\* to by the defendants as the moving parties.

The motion will be based upon the Minutes of the Court and upon the evidence, oral and documentary, as well as all papers, records and documents and exhibits on file herein pursuant to Sections 657, 658, 659 and 660 of the Code of Civil Procedure of the State of California, and upon the Memorandum of Points and Authorities to be submitted in support of this motion.

DATED: February 13th, 1973

GEFFNER & SATZMAN  
A Professional Corporation

By: Leo Geffner  
LEO GEFFNER  
Attorneys for Defendants

[Proof of Service Omitted in Printing]

ORDER OF SUPERIOR COURT  
OF LOS ANGELES COUNTY

Rendered March 15, 1973

[Caption Omitted in Printing]

[CT 644]

MOTION FOR NEW TRIAL AND  
MOTION TO TAX COSTS

In this matter, heretofore submitted March 12, 1973, the Court now makes the following ruling:

Defendant's motion for new trial is denied.

Item 28. Transcript, (partial) NLRB, \$338.25 and

Item 29. Simpson Depo travel costs to San Francisco, \$52.26 are ordered stricken and the cost bill is re-taxed at \$4,607.31.

Copy of this minute order sent to counsel for all appearing parties this date by U.S. mail. Certificate of mailing executed and filed.

[Proof of Service Omitted in Printing]



NOTICE OF APPEAL

Filed March 30, 1973  
[Caption Omitted in Printing]

[CT 645]

NOTICE IS HEREBY GIVEN that Defendants, the Los Angeles County District Council of Carpenters, Carpenters Union Local 25, and Earl George Daley, and each of them in the above-entitled action hereby appeal to the Court of Appeal of the State of California, Second Appellate District, from the Judgment entered against Defendants in favor of Plaintiff and entered on February 5, 1973 in Book 6798, Page 356.

DATED: March 27, 1973

GEFFNER & SATZMAN  
A Professional Corporation

By: Leo Geffner  
LEO GEFFNER  
Attorney for Defendants.

[Proof of Service Omitted in Printing]

Decision and Judgment of Court of Appeal of the State of California, Second Appellate District, Division Five, is reproduced as Appendix A to Petition for Writ of Certiorari.

Order Denying Petition for Hearing in California Supreme Court is reproduced as Appendix B to Petition for Certiorari.

ORAL PROCEEDINGS

SUPERIOR COURT OF THE  
STATE OF CALIFORNIA FOR  
THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 68 HON. ROBERT W.  
KENNY, JUDGE

RICHARD T. HILL, )  
 )  
Plaintiff, )  
 )  
vs. )  
 ) No. 951866  
UNITED BROTHERHOOD OF )  
CARPENTERS AND JOINERS )  
OF AMERICA, LOCAL 25, )  
an unincorporated association, )  
et al., )  
 )  
Defendants. )  
 )

REPORTERS' TRANSCRIPT ON APPEAL

December 12, 13, 14, 15, 18, 19, 20, 21, 26,  
27 and 29, 1972; January 2, 3, 4, 8, 9, 10, 11,  
12, 15, 16, 17, 18, 19, 22, 23, 24, 26, 29, 30  
and 31; February 1 and 2, 1973.

APPEARANCES:

For Plaintiff: COLEMAN, SILVERSTEIN  
& HOBART  
By: G. DANA HOBART  
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Suite 200  
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For Defendants: GEFNER & SATZMAN  
By: LEO GEFNER  
520 South Virgil Avenue  
Los Angeles, California 90020  
(213) 381-5561

[RT 148]

THE COURT: Good Afternoon.

Does the Plaintiff care to make an opening  
statement?

MR. HOBART: Thank you, your Honor.

Ladies and gentlemen, counsel, as some  
of you know, the opening statement is a time  
when the lawyers for each side have an opportunity  
to present to you what they think the evidence is  
going to unfold as the trial progresses. It is  
given to you more in a sense to acquaint you with  
the overall picture, so that you see how the pieces  
may fit into the general scheme of things.

Sometimes we are surprised. Sometimes the evidence doesn't come out exactly like we think, but I do think, by and large, the evidence will be as I present it to you here.

One of the reasons that the case is going to take as long as it will is because we are going to have to reconstruct for you the dispatching procedures, as well as some of the actual dispatches as they occurred out of the union hall during 1967 and '68, for the most part, and a little bit in 1969.

So the evidence will show, in a sense, an instruction element. That is so you will see what the procedure was, so that you will understand it, and I will discuss that with you now, and it will go

[RT 149]\*

into far more\* elaborate detail.

Basically, the structure is this: The Carpenters, Local 25, which is here off Alvarado Street, is a union hall where members of the Carpenters Union who carry their book -- that just means they get employed out of that local. They have a little book that they present to that local, and they are dispatched from that local. A carpenter could go to virtually any local that would, for one reason or another, fit his needs and fancy, and work out of that local, if there is work, and so forth.

Mr. Hill has worked out of Local 25 since 19- -- well, 1961, I think it was. He's been a

carpenter since 1952. Now, when a contractor, we'll say a man, one of the companies, builds a high-rise building, or virtually anything lower than that, but when they are in the process of building, they will call up on a day-by-day basis to the Carpenters Union. They may call up early in the morning, and they may call up late in the afternoon. If they'd call late in the afternoon, they'd say, "Tomorrow we need five forms men." Forms is one of the types of carpenters, guys to put the forms in, and they pour cement into it, and that sort of thing. You have seen wood structures around the cement foundations on this and that, and various buildings; but at any rate, they call up and say, "Tomorrow send us out five forms men to such and such a location."

Now, the responsibility at this point, then, is the next morning, when the dispatches are actually made from the union, or when they

[RT 150]\*

are supposed to be made from the \* union, the business agent who is in charge of dispatching -- it could be one person on that particular morning, or it may be two, or even possibly three. But generally it's one, sometimes it's two -- that business agent, if he follows the rules, the bylaws, and the contracts and various agreements, he'll go to what's called the out-of-work sheets. Now, I'm just holding one here at random for a period that has no relevant significance in our case; but you will notice that the out-of-work sheets have dates on them; 8/14/67.



Now, almost always these out-of-work sheets are made on Monday mornings, after dispatches for Monday morning have occurred, off of the preceding week's sheet. In other words, after they have made the dispatches off of the sheet for the 7th of August, whoever's left in the hall then comes back and signs this list, moving up in position according to the number of people who had been dispatched during the previous week. I'm going to do this slowly and a couple of times, because it is important that you understand the process here that's involved.

So, for example, on -- well, say on the afternoon of the 15th, or any time during the week that a given sheet would be in effect, the carpenters local gets a call for five forms men, or carpenters, tomorrow, sent out to such and such a contractor. Now, under the rules of the union, the business agent then goes down the list and takes the first man, if the first man is there and available, and wants the work. Which means the first five people who should be dispatched would be the top five names on the

[RT 151]\*

list. Well, there are \* certain exceptions to that. It's difficult to understand quite what it is, but sometimes if a person doesn't have any box checked, they just would go on to the first person who's got a box checked; but that's an ancillary matter that we will get into at a later

point.

But, at any rate, the regulations are, the rule is, the union bylaws are, that they must be dispatched in order if they are qualified to do the type of work that is being requested. Sometimes you get a call for a cabinetmaker. Well, not all the carpenters are cabinetmakers. That's a rather refined element of the field, and consequently, they may have to go several pages before they find a cabinetmaker. But, in general, for the general type of work that these men do, they are required to come off of this list.

Now, when the carpenters local gets this original call from the employer-contractor, they have what is called the white slip. I don't know offhand if we have a copy of a white slip here, but basically a white slip -- I think what I'll do, as a matter of fact, is jot down for you the various forms that are involved.

First, we have the out-of-work sheets -- my apologies for anybody that gets shivers from that kind of squeaking. Okay, the out-of-work sheets are the sheets I have shown you. That's the long form.

By the way, as an addendum to the out-of-work sheets, that is, each man that is out of work after a Monday morning's dispatches signs the following week's sheets. That means,

for example, during the week three people off

[RT 152]\*

of this \* week were dispatched. They obviously will not be on the sheet the following week, so that means, in a sense, that everybody has moved up three spaces; or if 40 people have been dispatched, then they would have moved up 40 spaces -- if they were ahead of you, that is.

Okay. Each man is supposed to sign his own name, and each man is supposed to sign in the order of the preceding week. The evidence will show that on numerous occasions these business agents, some of the defendants, would allow friends of theirs to sneak in. That's the word. It's called a sneak-in. In other words, you'll find men signed here who have no business being signed high on the list, who should, rather, be at the back of the list, but who you will find are relatively high on pages 1, 2, 3, 4; high on the list.

You can see by the one document that I'm holding, that some names have been lined out. This means they were dispatched that week, consequently, they will not be on the next week's list, unless there is an exception; unless he has less than two days' work. In other words, if a man that goes out on a job that lasts less than 18 hours -- 16 hours, I guess it is -- if it lasts less than that, then he doesn't lose his place on the list; but other than that, he loses -- if he goes out for a three-day job, he loses his place

on the list. At the end of the three days he has to come back and sign on the bottom of the list. If he gets a year-and-a-half job, works a year and a half, he comes and signs at the bottom of the list.

[RT 153]

The evidence will disclose to you that numerous jobs last months and months, sometimes a year, sometimes even two years on some of these bigger jobs. The evidence will disclose to you, in that respect, there are good jobs and there are bad jobs. All right. Now, that's the nature of the out-of-work list.

Now, as I indicated, when the business agent, or when the office of the carpenters get this telephone call -- now, this phone call could be taken by a business agent if he happens to be in the office in the afternoon or morning, when that call comes in, or it could be taken by one of the clerks in the office. You will see the name Evelyn Folick, on a few occasions, and she was a clerk that worked for the union; and you would see that on some of these white slips. These are telephone orders; telephone orders for men.

A white slip is made out. Get on the telephone, yes, okay, Mr. Superintendent, or Mr. Foreman, or whoever she's talking to from the construction company, you want five carpenters for tomorrow. All right, where shall they go? Okay. And she makes a notation of that.



Now, that white slip is given to the business agent in the morning so he knows what jobs he has to fill. Now, he takes this white slip and he says, "Okay. The Simpson Construction Company wants five men" -- five forms men, we'll say. He goes down, "Okay, Mr. So-and-So, Mr. So-and-So, Mr. So-and-So." If those men are there, they will be dispatched on this sheet, if it's done properly.

There's another document that will \*

[RT 154]

come into play \* in this case, and this is an orange card, and this is the employer request. Now, the employer request form is a document that is a little card about 3-by-6, something like that. It's orange, and that's the official form which a contractor, the employer, uses when he wants to request a particular carpenter. So the rules do not say that all dispatches must come off of this sheet. There is an exception, and that is, the employer may request up to 25 percent of the labor force that is being dispatched to that job.

Now, of that 25 percent, the rule also says that before you can make such a request, the man that you are requesting must have worked for you some time in the last, I think it is, three or five years. In other words, they can't just go out and request anybody, but it's got to be somebody who has worked for that construction company in

the past, and then their requests are technically limited to 25 percent of the force they are hiring.

Now, the orange card has not been uniformly required of an employer. The union has allowed them to send in any type of a slip, just a written request for carpenter Joe Smith. Please send Joe Smith out to my job tomorrow, or the next day, or whatever day they are having dispatches sent out. So the employer can use any written request; just a little slip of paper, a scrap will be enough. In one case, I think the request was made on a block of wood. So, in other words, the formality of the request system is not formal, to put it in a nutshell.

Now, in addition to these two methods

[RT 155]

of written \* requests, there are also oral requests. Now, the oral requests generally would come at the time the original telephone call was made, maybe to the clerk, Miss Folick, who I have mentioned, or even to the business agent himself, "Tomorrow send us out five carpenters. Make one of those Joe Smith" -- or make two of them, Joe Smith and Ben Smith, that sort of thing. So the person who took the telephone order would make a notation on the white slip, since this was a telephone order, make a notation on there, we also have a request for two people, or whatever it may be.



All of these procedures of requests, all three, have been honored throughout the period that our lawsuit is concerned with, which I might point out to you is roughly from January 1, 1967 to April 1, 1969. The evidence will show that all these forms of requests have been made, and have been honored.

Now, one other card, or slip of significance, is called the work referral. The work referral slip is -- I'll take the first one here, so I can put it back in order and know where it goes. I have no idea what it is, but here's a work referral slip. It is the pink slip. This slip is given to the carpenter at the time he is dispatched by his union. In other words, the business agent said -- I can't quite read the name here, but let's say it is Joe Smith, to stick with my highly imaginative name -- "Mr. Smith, you're being dispatched over to the William Simpson job at Sunset and Vermont." The slip has got the name and signature of the business agent who's making

[RT 156]\*

the dispatch, and if the dispatch \* is a request, sometimes the word "R-e-q" will appear on this slip.

So the worker takes the slip handed to him by the union, and he goes on to the job, and this shows that he's been properly dispatched to the job. So that's the work referral slip.

The allegations of this lawsuit are, and the evidence will support it, that in the dispatching procedure Mr. Hill would be personally discriminated against in numerous ways. For example, the evidence will show that Mr. Hill would be on the out-of-work list, and he would be in a position where he should be sent out on a job, but the business agent in charge, rather than sending out Mr. Hill, who is ready, will, and able to work, would do one of several things. One thing he might do is he would take a friend of his, who may or may not be on the sheets, and take that work referral slip and just write the word "Request" on it, even though there had been no bona fide request, and they would give that job that Mr. Hill should have been dispatched to, to a friend.

Now, every time they would do that, obviously, Mr. Hill did not move up a notch, if somebody ahead of him should have gotten that job, and on some occasions you will find that people below him got those jobs who were on the list below him, and other times people who were not even on the list got these jobs.

Now, if there is a request, as the work referral slip might indicate, then we go back

[RT 157]\*

to the orange cards. \* Any written request at all, or proof of any oral requests, if it is noted on the white slip, and we check to see if there was a

request. Well, a fair number of our records are unavoidably missing, but that which we have will demonstrate to you for certain periods of time that there would be no evidence on numerous occasions -- no evidence at all -- that there was such a request.

Mr. Hill was discriminated against in other matters. For example, the business agents, whose responsibility it is to see that these lists were signed in the proper order, and who is the only person charged with that responsibility, would let sneak-ins, people sign above Mr. Hill's position; and you will see that on some of those occasions, those people got dispatched to jobs where, but for their presence, the job should have been offered to Mr. Hill.

You will find other areas of discrimination against Mr. Hill. The testimony will be that it is the policy of the business agents to tell a man when he's next on that list, "You're next. We've got these jobs available. We've got a job for, we will say, the Simpson job. It looks like it's going to last six months, or one month, five days. We've got this job that's going to last a certain amount of time." Obviously, it is done, because when you're on the list, and you're up high, preference is to the longer jobs so you can keep working and keep out of the employment lines. The evidence will show Mr. Hill was never given his choice of better jobs, and that oftentimes he would sit on those lists for, like, three months, going from

[RT 158]\*

the bottom of the list to \* the top of the list, and when he'd get to the top of the list, they would offer him a three - or four-day job, or a very short job, when other jobs were available. So he'd go out and work three days, and spend another lengthy period of time on the out-of-work lists.

The evidence will show that the friends of the business agents worked regularly and constantly, and almost without ever being on these out-of-work lists.

The evidence will show that numerous people in the union -- and we're not bringing all of these people in for you to examine. It would take forever to finish this case, but we are bringing in plenty -- you will see that numerous of the political cronies of the dispatchers, the people who were in control of the dispatching procedures, that they worked hundreds and hundreds and hundreds of hours, whereas Mr. Hill, in 1967, worked no hours; but that was part of the period of time, in fact, the most period of time he was disabled from the emotional breakdown he had because of conduct which occurred earlier in the year, which I will talk about in a moment.

But in 1968, when he was available the entire year, Mr. Hill worked something like 600 and some hours for the whole year, and the cronies of the "in" group worked, I don't know, three, four, five, six times that much. I'm not sure, but far out of proportion.



In early 1967 -- well, let me -- yes, in early 1967 Mr. Hill was the elected vice president of Local 25. He had been elected in 1965, I

[RT 159]\*

believe, or '66 -- '66, I think -- \* and I think it's a three-year term that would expire around June of 1968.

The evidence will also show that Mr. Hill has been elected official of that union in various capacities; that he has been on the trial board; he's been on the negotiating committee; he's served in various offices as trustee, steward, that sort of thing -- stewards are appointed. We'll talk about that -- various types of offices that he held. In other words, he's been a very active political person.

Just about the first of 1967 certain incidents were taking place in the union. One incident was an annual report, that all labor unions are required to file, had been filed under the signature of the president of the union, a man by the name of John Nelson. Mr. Nelson had signed this report, and apparently the federal government, for one reason or another, had sent it back and said it had to be revised. There were some discrepancies of some sort. Mr. Hill and Mr. Nelson, president and vice president, were asked to resign the new -- or first, Mr. Nelson was asked to resign the new one, the new revised document, and Mr. Nelson wanted a hearing with an auditor. He asked Mr. Hill to join him. They tried to set up a meeting

with Mr. Keen, who was -- I think his office is called like the treasurer. He's in that office all the time. He's one of the defendants -- and they asked to set up a meeting with the auditor, they didn't want to sign something they didn't know

[RT 160]\*

about, and put their signatures to it. \*

Mr. Nelson refused to sign it. It was presented Mr. Hill to sign it. He also declined, said he wanted to find out what the discrepancy was, and wanted to have a meeting with the auditor.

They had a meeting arranged at that time, but the auditor didn't show, and they still attempted to have Mr. Hill sign this document. He said, no, he wouldn't. That's one incident that was going on.

At this time a general eruption of a political nature occurred over this incident. Mr. Hill had refused to sign the document, and in early January, the January the 1st books, he was on the out-of-work sheets. Hostilities which had been smoldering came to a head, primarily between him and a man by the name of Blackie Daley; E. G. Daley, one of the more significant defendants in this case. Blackie Daley was the business agent with the most seniority as business agent, and although I don't think there's an official title, he was, for all purposes, the chief business agent. He was the man who basically was in charge of Local 25. He ran Local 25, and the evidence will



show that he ran it with a steel clamp, and I mean his fist.

The evidence will show that he often said, "Nobody gets a job out of here unless I okay it," and he told it to Mr. Hill on numerous occasions during this period when he and Mr. Hill broke. Mr. Hill had been friendly with him prior to this, had supported him, I believe, for an election once before; but at this stage they broke over the

[RT 161]\*

internal affairs of the union. \*

Mr. Hill was threatened by Mr. Daley during this period, "You will sit on this bench" -- that is, the out-of-work bench -- "until hell freezes over. You'll never work here again," things of this nature. Constant threats to Mr. Hill, and various incidents occurred to bear that out.

Now, during this period Mr. Hill started keeping track of the dispatch system. He started actually going through, trying to check the names of the people who were on the sheets, to the dispatches that were actually sent out, and he saw that there were numerous, numerous -- 50 percent, give or take a little -- discrepancies. Men being dispatched who were not on these lists, and every illegal dispatch, certainly an act of discrimination against him, as well as anybody who was under him, or who should have been dispatched on that list.

So he started keeping this list, and he started complaining, charging these men who were in charge -- Mr. Daley, primarily, but there was also at the time Mr. Wilk, Joseph Wilk -- charging these people with failure to follow the rules, failure to carry out their trust, failure to dispatch their jobs according to the rules, regulations, and constitution of the union.

These men, in turn, told Richard Hill, "Get lost. If you don't like it, get the hell out of this union. We'll run it our way. Split, leave, go," called him stupid names, made fun of him, picked on him at every opportunity, demeaned him socially, told other workers, "You mess around with Hill, you'll get the same treatment

[RT 162] \*

he's getting." A constant \* accumulation of this type of activity.

In March, 1967, Mr. Hill had been offered a job which was called a steel-forms, or steel-pan type of job. It's not a typical wood forms, these are steel forms. The evidence will show you that a man has to have special strength, be particularly strong to handle that type of work; that he has to be -- that this is absolutely the bottom of the barrel to most carpenters, most trained journeymen wood carpenters. That is the bottom of the barrel for the type of work, and if you're not trained in it, you can get injured. It's not just something you give to somebody who does not have training.

But, at any rate, they offered Mr. Hill this job when his name got to the top of the list in March of 1967. This is after sitting on the bottom of the list, and moving up from January. Mr. Hill declined the job, said he was not trained for it. This job was a penalty type of job. They knew what they were doing. The evidence will show that they knew what steel-forms jobs were. This wasn't just an ordinary dispatch, in the ordinary course of things. As a matter of fact, the evidence will show that certain men, the stronger younger men, were particularly suited for this, and were primarily used in the steel-forms work, as compared to the general average carpenter.

So Mr. Hill declined this job. When Mr. Hill declined it, Blackie Daley telephoned the Department of Employment, and they said, "Richard T. Hill is not eligible for your benefits

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for unemployment benefits" -- which most \* carpenters lived off of when they were sitting on these lists moving up -- "He's not eligible for this, because he refused a job." Mind you, this is his union calling the Department of Unemployment and telling them this, not an employer.

The evidence will also show that the employer has a duty to report it; report firings, quitings, refusals of work, to the Department of Employment. There's no such obligation on the union to do this.

So Mr. Hill, when he went to the Department of Employment for his next check a few days later, they pull out a pink slip and advise him that, "Sorry, you apparently turned down work." So at that point Mr. Hill said, "Well, just a minute. Please call the union." The girl calls the union, talked to Mr. Wilk, I think it was, and got some information. The upshot of that was that he did not get his check. They said, "Well, we'd have to have a special hearing on it, because we have this notation that you have turned down work. After sitting on the unemployment lists for three months, you have turned down work, and we can't give you the benefits until we have a special hearing on this."

Well, this was more or less the climax of an extremely hectic four months in Mr. Hill's life, and at this point, shortly thereafter, shortly after this incident, in the early days of April of 1967, Mr. Hill just collapsed, and his doctor placed him in the hospital for a period of nine or ten days. And the doctor, Dr. Vincent DeJohn, will come into court, and he will testify to you that they ran every conceivable test on Mr. Hill,

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and they could find nothing \* organically wrong with him; that is, no physical answer to the cause of this breakdown. It wasn't an ulcer, it wasn't an old ulcer coming to life again, no evidence of that, although there is some indication he had had an ulcer 20 years prior. It was because of something they couldn't find physically.



The records do say that, among other things, Mr. Hill was a moderate drinker. There's one notation that he drank heavily. I don't know anybody that knows how or why that notation got into the record, but his own doctors say he was a moderate drinker, which he was. There's no secret about that.

But Dr. DeJohn will testify that during this period of time he had advised Mr. Hill to "Just get away from your problem at this union for a while. You can't take this day-in-and-day-out type of harassment, abuse, criticism, with the pressures you are going through." So Mr. Hill got out of the hospital the middle part of April, and after he did, he stayed on disability until approximately the first of May, 1967.

Then in May 1967 Mr. Hill had implored Dr. DeJohn to let him go back to work for a while. He wanted to try it. He needed the money. He'd been using up savings that he had, meager that they were, cashing certain government bonds that he had bought in the past.

Mr. Hill, by the way, is a single man, is not married, does not have a family.

So Dr. DeJohn said, "All right, we'll

[RT 165] \*

try it." \* So he released Mr. Hill for work around the end of April of 1967, and Mr. Hill

then went to a job that was entitled the Dinwiddie-Simpson job. This was a job to build a big building for two contractors, Dinwiddie Construction Company, and Simpson Construction Company, a joint venture, as one, to build this big building.

Mr. Hill went over to that job, and attempted to get a request for him so that he could get an employer request so that he could go out and he could go back to work.

I might add that it was the custom of a union to put a man to work as quickly as possible when he'd come back from a disability or an illness, an injury, that sort of thing. Mr. Hill was not given that formal accord.

So, at any rate, he attempted to get a job request, and for the workday of May 1, 1967, a gentleman by the name of Charles Simpson, who was a superintendent on this Dinwiddie-Simpson job, had, through one of his people, made a request for something, I think it was five carpenters, and I think he named all five, or at least some of the five, on that list was Richard T. Hill. This was an oral request.

Mr. Hill was at the dispatch window on the morning of May 1st, and at the end of the morning call his name had not been called for the Dinwiddie-Simpson job, and he inquired of Mr. Daley, "Don't you have a request for me from the Dinwiddie-Simpson job?" Mr. Daley said, "Well, I'm not going to tell you. It's none of your business."



I'm running this place. If I did have one, you

[166]\*

wouldn't get it, anyway"; words \* along those lines. Mr. Hill was not dispatched to that job, even though there had been a bona fide employer's request.

Now, there had been, possibly, at least, some evidence saying, well, it wasn't a bona fide request, because it was oral. The evidence will show there were plenty of oral requests made. There will be evidence to the effect that the Dinwiddie-Simpson was a one-time job. Nobody had ever worked on it before.

Mr. Hill subsequently filed a National Labor Relations Board action, saying they failed to dispatch him on that job pursuant to the request, and Mr. Hill carried that matter into the National Labor Relations Board. At the time of that National Labor Relations Board pending action, Mr. Hill was constantly being berated -- I might add, that after about the first of June Mr. Hill went back on disability. He didn't get the job at Simpson, and he was low on the list, and they weren't sending him out to work, and he felt it was customary for a returning man to get some type of a job, so Mr. Hill, going through this on his doctor's orders, was placed again back on disability, where he remained for the rest of the year.

But Mr. Hill continued to carry out certain of the functions of his office. He was, as I told you, vice president of the organization, and he had to -- he couldn't miss three meetings in a row, or you'd be terminated from office; so he fulfilled his obligations in that manner, and did continue to have some contact with the union.

[167]\*

And the union officials would say to the union \* people, with reference to Hill, "Who does he think he is to come and try to take money from the union from the NLRB," and demeaned him further, poked fun at him, just made his life very, very difficult.

At the time of the NLRB hearing, Mr. Daley even threatened Mr. William Fleming, who was there to testify as to certain things that would help support Mr. Hill's case. Mr. Daley met Mr. Fleming in an elevator, and told him that he'd better not testify against the union in favor of Mr. Hill, otherwise he would get some of the same treatment that Hill was getting; but Fleming, fortunately, is an elderly Swede, I think, who is not easily intimidated, as you will see, and he went in to testify to those things he could at the NLRB hearing.

For the balance of 1967 Mr. Hill did not work, because he stayed on disability, just unable to, physically unable to, emotionally unable to, mentally unable to work.

He was released in January, on January 1st, I think it was, of 1968, to go back to work. So on January 1st of 1968 he came back to work, and again asked for the courtesy that had been given to others, to allow him to sign high on the list, or be given a dispatch so he could get back earning some money. He had asked this of Mr. Daley, or Mr. Fenwick, who was in the picture around this time -- Fenwick or Wilk or Daley, one of the three -- and on the first day back he was not dispatched, so he went over to the Los Angeles District Council of Carpenters to Mr. Gordon McCulloch, and he asked Mr. McCulloch -- who, by the way, has the responsibility of all the business agents. They work directly under him. They are his responsibility. Mr. McCulloch, I believe, was instrumental in getting Mr. Hill a job with the Vinnell Company, and Mr. Hill worked on that job a period of about three weeks, and then was terminated. We cannot establish how or why he was terminated, but it was shortly after one or more of the business agents had come on to the job.

The evidence will show that those men who stayed on that job, the rest of them, they worked the entire year on that job, made something like eleven to fifteen thousand dollars on that job. Mr. Hill worked on that job a handful of hours.

So then Mr. Hill went to the bottom of the list again, and he worked his way up, and there are other incidents -- numerous other incidents which I won't go into now, but all through 1968 --

incident after incident of discrimination against him, threats against him, threats of fighting him, "I'll beat the hell out of you," threats of pushing him -- nobody ever hit him, but pushing and shoving, coupled with threats, constantly telling other people, "You mess around with Hill -- don't let me see you with Hill, or you're going to get the same treatment he's getting" -- constantly, all through 1968, through April of 1969 when this lawsuit was filed.

During that period of time, 1968 and 1969, Hill didn't go back to his doctor except on one or two occasions, but during that period of time the

[RT 169] \*

evidence will show that \* he continued to suffer severe emotional distress, that this had a horrible effect on him, causing him physical upset, emotional upset of a most severe nature.

The evidence will show that all of this conduct was intentional; that these people did this conduct against Mr. Hill because of the political opposition inside of this union, where he was fighting what he considered to be their corruption. They knew he was fighting it, and he fought it up until at least this lawsuit was filed.

There will be testimony from several people who were witness to some of the events. Some of the events will go without corroboration. We have subpoenaed into court people who are both -- who were at one time or another politically



supporting Mr. Hill in his opposition to the internal union politics, and people who were opposed to him. They are not coming -- being subpoenaed into court to testify on his behalf, as you can well imagine, but we will have other testimony to bear out some of the allegations of our complaint.

So, in a nutshell, that is the nature of our lawsuit. Specific details for 1968 we will bring out as we go forward, but it is important that you understand the hiring hall mechanism -- and we'll go through that with testimony early in this trial, to bring it out even further -- but it is important that you fully understand that so you can comprehend the nature of the conduct that followed.

Now, as I said at the beginning, the testimony doesn't always follow exactly as you

[RT 170] \*

think it's going to. This is what I think is going to occur, based on depositions taken in this case -- we have taken about 12 depositions -- on interrogatories -- those are written questions we have asked of defendants in the case -- and consequently, if things follow their normal course, this should be our testimony in court.

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[RT 216]

MR. GEFFNER: Well, your Honor, at this time I'd like to make a motion for a judgment in favor of all defendants, following the opening

statement of the plaintiff.

I waited until I finished my opening statement so there would be continuity, but I believe before evidence is introduced, a motion is proper, based on the plaintiff's opening statement as to what he intends to prove.

I know we have gone into this point of pre-emption in great detail on the motion on the pleadings, and I'm not going to take a lot of time in argument, but I do feel the obligation to make that motion at this time.

When your Honor had the motion for judgment on the pleadings, he simply had before him the allegations of the second cause of action of the first amended complaint, and at that time a motion for judgment on the pleadings, based on pre-emption, was that the items complained of in terms of job discrimination, dispatching procedures of the union that's involved in interstate commerce, is arguably an unfair labor practice

[RT 217]\*

under the National Labor Relations \* Act of 1947, as amended, and therefore, is within the exclusive jurisdiction of the National Labor Relations Board and the federal courts in enforcing and acting on Labor Board orders, and that under the pre-emption doctrine the state courts are precluded from exercising jurisdiction by way of injunctive or damage relief.



Now, your Honor denied the motion, and we we proceeded with the selection of the jury, and Mr. Hobart made an opening statement. Now, in his opening statement Mr. Hobart went into detail, at length, to state that he intends to prove a discriminatory practice and procedures of the hiring hall of Carpenters Union, Local 25, and he would have all of the out-of-work lists, the request slips, the referral slips, to show a pattern of discrimination in this case on the part of Local 25 in relationship to Mr. Hill, and I think at one point he said that is the heart, or the crux, or the thrust, of their entire case.

Now, in view of that fact, your Honor does have before him, at least, what the plaintiff intends to prove, and does not have just the bare naked pleadings of the second cause of action that he was in a position of ruling on for motion for judgment on the pleadings.

Now, again, at this time I want to renew my motion, make my motion based on pre-emption. I have just one short argument, and I'm not going to take a lot of time.

Under the Garmon case, under the Borden and Perko cases of the United States Supreme Court, upheld and reaffirmed by the United States

[RT 218]\*

Supreme Court in Lockridge, and \* on the California state court cases, which are numerous, but specifically the case of the Teamsters v.

Superior Court arising in Orange County, that the issue of hiring hall procedures, dispatching procedures, and discriminatory policies is clearly preempted under the pre-emption doctrine and the state courts do not have jurisdiction.

Now, this case, I believe, presents a classical case for the basis of the pre-emption doctrine. Whether we agree or disagree with the pre-emption doctrine, it's certainly the law of the land, and the pre-emption doctrine in the Borden and Perko Cases, and our own cases in California, state that there is a national federal policy involving labor relations in interstate commerce, which a National Labor Relations Board has the expert administrative body, is given exclusive jurisdiction to determine discriminatory practices in the hiring hall of unions that are involved in interstate commerce, particularly the nature of the construction industry which is well into the gamut of interstate commerce, and is one of the most important industries in our economy that Congress was concerned about in terms of interstate commerce and national labor law policy.

Now, the sole remedy is with the National Labor Relations Board. Now, if the Labor Board had the opportunity -- and in one instance Mr. Hobart's argument stated Mr. Hill did file a charge with the national Board involving the Dinwiddie-Simpson job -- then the Labor Board decides whether there is unfair labor practices

through their procedures, and either issues an order of some kind, or not.

[RT 219]

Now, the problems of running a dispatching procedure for a union is a complex, difficult area of understanding and comprehension. Cases are clear that the area of Labor Relations is unique in our law, and that's why selective bargaining agreements are not treated as standard-type agreements, in the sense of being a commercial agreement. Something different, the Supreme Court has said, because of the uniqueness of labor agreements.

Now, that's where pre-emption applies. It's only an expert administrative body on a national level that can really understand, or should understand, the complexity of labor relations and the interplay between employers and unions and members involving hiring procedures, and therefore, the National Labor Relations Board is the sole body forum to make a judgment regarding discriminatory practices, and to issue relief, if necessary.

Now, again, the reason why I say this is a classical case is because the plaintiff is asking a jury, and your Honor, to some extent, as part of the state court processes, to sit here for six weeks, 30 trial days, and go through out-of-work lists, request slips, dispatch procedures, pass judgment on hiring practices of the local union in the construction industry that occurred a

number of years ago, and it's exactly that type of function that this court -- with all due respect to your Honor and superior court judges, because the same applies to federal district judges, superior court judges, district court judges -- and jurors are not in the position to properly

[RT 220] \*

evaluate hiring hall procedures of a \* construction union in interstate commerce on a local level.

That has a national labor policy implication, and if this jury or your Honor grants damages to Mr. Hill, where the Labor Board may or may not have given relief -- and what that means is in spite of the expertise required in operating a hiring hall, whether it's unfair practice or not, on a national policy to an expert agency that is supposedly charged with understanding the complexity of labor relations, any jury, any state court judge, can hit a union with damages, with the obvious implications of what means to a national uniform policy.

I believe, your Honor, that this is the heart of Mr. Hobart's case, the plaintiff's case. We are going to have to sit here for weeks and weeks, and do the job that only the Labor Board, by direction of Congress, is charged with the responsibility to do, and we are not in a position -- your Honor is not, and the jury is not in a position, in terms of the complexity of labor relations, in terms of trying to take over



the job of the Labor Board -- to decide whether this hiring procedure was discriminatory or not.

MR. HOBART: Well, Judge, I don't think the issue at all is whether this hiring procedure is discriminatory or not. I think the issue is, did these individuals intentionally set out to discriminate against Richard Hill, and did they discriminate against him in a manner so as to cause the damages we have alleged.

The discrimination -- I should say the infliction of emotional distress does not come

[RT 221] \*

solely from the dispatch procedure. These people did treat him unfairly in the dispatch procedure, and that's part of it; but in addition to that, they also threatened him with starvation. They threatened to deprive him of his livelihood; in a sense, depriving a man of his own manhood. They told him if he didn't like the way things were being run, to leave this union.

He was an elected officer for most of the period that we are concerned with, in one role or another; had a responsibility, perhaps, to ask questions, but all he ever got was personal abuse. He got threats of bodily harm. He was pushed and shoved, in connection with the threats.

The people, as a part of a conspiracy and intention to literally smash --

THE COURT: Well, that is the distinguishing feature, of course, of your case. I mean, in considering whether I'm going to overrule or grant the motion on the pleadings pertains here.

But I think that you might well, in presenting your case, put your emphasis on that, and not on the minutia of the hiring hall procedure.

MR. HOBART: That is my intention, your Honor. I recognize that we could be here forever if that's what I was trying to do, but, you see, I'm not trying to indict the unions in their -- or this union in its dispatch procedure in a general way. That's water under the bridge, perhaps. I don't know whether it's going on now or not.

But what I have attempted to do, in the limitation of my presentation of evidence, is to

[RT 222]\*

show how these people \* zeroed in on Dick Hill.

THE COURT: Well, you stick to that purpose, and I'll deny the motion at this time.

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[RT 223]

KENNETH LE ROY SCOTT,

called as a witness by the plaintiff under the provisions of section 776 of the Evidence Code, having been sworn, testified as follows:

DIRECT EXAMINATION



BY MR. HOBART:

Q. Mr. Scott, will you tell us your present job title and occupation, and who your employer is.

A. Business representative for Carpenters Union, Local 25.

Q. And when did you first obtain that position?

A. Took office in the latter part of July 1968.

Q. And prior to July of 1968 had you also been a carpenter working out of Local 25?

A. Yes, I was.

Q. Now, prior to coming into court, you had received from me a document, a demand to produce certain official documents; is that correct?

A. Yes, I did.

Q. Now, with respect to the documents, one of them that you were requested to bring, were all of the out-of-work lists, also referred to as the employment lists, from December 25, 1966 through and including April 1, 1969.

Can you tell us, Mr. Scott, which of

[RT 224] \*

those documents \* you did bring?

A. To the best of my knowledge, I think I brought most of the documents that you have asked for.

We've got an office staff working round the clock, double shift, trying to provide everything you want.

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[RT 230]

Q. Now, with respect to the work referral documents that you brought pursuant to the demand to produce, again, the demand to produce requested all work referral lists concerning work lists from various employers from January 1, 1967, through and including April 1, 1969.

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[RT 235]

Now, you say the office is continuing to search out these records?

A. Yes.

Q. Can you give us an estimate as to when that search reasonably can be expected to be concluded?

A. Well, they have been working now for two weeks. We are working two shifts. We have uncovered just about everything we possibly can.

Q. Have you brought everything that has been uncovered to court yet?

[RT 236] \*

A. No. When I left this morning they said they had \* a few more boxes. Also, they are accumulating this material because we may need it if a member comes in, so it's quite costly and time-consuming.

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[RT 245]

Q. Tell us when the union gets a job call how the dispatch is carried out; the physical surroundings, just in general.

A. We have dispatching between 7:30 and 9 o'clock in the morning. Now, a contractor will call at any time from approximately 7 o'clock in the morning until 9 o'clock at night, if you're in the office that long, and they will place an order for X amount of men, you know, for the following day.

If he called before 9 o'clock in the morning, then we just dispatch them. We call them out of the meeting hall, or the waiting room where the members, you know, sit and wait, and talk and visit, until such time you call out the jobs.

Q. So if you get a call sometime after 9 o'clock, that would be for the next day, would it?

A. As a rule. Normally speaking, unless it was an extreme emergency; or in some cases, you know, you might have a job that maybe the foreman was to call it in, and he didn't, and the last minute the superintendent calls in and says where are his men.

[RT 246]\*

Q. With those exceptions in mind, then, any call \* that would come in after 9 o'clock would usually go to the next day?

A. Yes, go to the next day.

Q. And conversely, any call that would come in before 9:00 a.m. would, as a general rule, reflect dispatches that day?

A. Dispatches that particular day.

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[RT 252]

Q. Now, Mr. Scott, after you are handed the telephone order and you know, for example, that particular employer wants five carpenters, what is it that you do in order to get those five carpenters?

A. Well, we have a P.A. system, and you call out to the carpenters that's in the hall there.

Q. How do you know which carpenters to call off?

A. Well, it's sort of difficult. You know, we started one system at one time, or they had a system which didn't work too well, where we had the carpenters classify themselves, and then the carpenter, if he had forms experience, he had to go down here and find a carpenter that would do forms, so he'd call his name.

Q. When was that procedure in effect?

A. That was in effect '68, '69.

Q. Also in '67?

A. I'm sure it was, yes -- I think -- in fact, I think that's the standard procedure, dispatch procedure. I think it's from the beginning of time.

Q. To back up for one moment, then, this document, the out-of-work sheet, is a document that the carpenter himself signs; is that correct?

[RT 253]

A. Yes.

Q. And there are various boxes where he can check the type of work that he feels that he's qualified to do; is that the idea?

A. That's correct.

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[RT 290]

Q. BY MR. HOBART: Mr. Scott, the rules regarding the dispatch of stewards is found where?

A. The rule for dispatching stewards?

Q. Yes. Do you know what document that is located in?

A. I don't know there is any set rule.

The business agent picks his stewards on the job. They choose the steward for that particular jobsite.

Q. Now, you have told us -- I may be confusing your statements with the opening statement -- the steward, basically, is the man who is the representative of the workmen on a job at a particular jobsite; is that basically his role?

A. Yes, that's right.

Q. And is it his function and responsibility to see to it that the Master Labor Agreement between the employer and the union is carried out?

A. Yes, to the best of his ability.

Q. It's his duty to see to it that any violations of the contract are corrected, or at

[RT 291] \*



least brought to the \* attention of the contractor?

A. Yes.

Q. And if they are not corrected forthwith, then it's his responsibility to bring that to the attention of the union leadership, in order that they may consider some future action?

A. Yes.

Q. And is it also his responsibility to assist in grievances that may occur on the jobsite; that is, complaints that the workmen have for some reason or other -- try to work out these grievances, any particular problem the men may have?

A. Yes.

Q. And in some situations, on those jobs where there are particular labor-management difficulties, he, in a sense, is a troubleshooter, and will go in and attempt to smooth the waters, or to assist management and labor in solving the particular disputes so the job can go forward?

A. Right.

Q. Would you describe that job as one of minor responsibility, or anything more than that?

A. Well, it's hard to -- there again, it's hard to explain this type of a job. For some --

Q. Well, in a general way, can you tell me, do you consider the responsibility of a steward to be one of minor responsibility, or do you consider it to be one of significant responsibility?

A. Well, it's of significant importance,

[RT 292] \*

but I don't \* think it's of a -- depends on the job-site. It's a relatively easy job for some contractors, and it's a rather difficult job for some contractors; but generally speaking, it's a relatively smooth operating job, yes.

Q. In other situations it can be one of immense responsibility?

A. Yes.

Q. I neglected to state, also, the steward is in charge of safety on the job; to see to it that dangerous conditions are eliminated, or reduced to the absolute minimum, consistent with state law --

A. Yes.

Q. Is that correct?

You will have to answer out loud.

A. Yes, that's correct.

In fact, this is the major role that he plays on the jobsite, is taking care of -- as far as his

work duties, normally speaking, they work on a -- you know, on the safety crews.

Q. And you have indicated that it is the business agent's responsibility to select and appoint the steward on the particular job; is that correct?

A. That's correct.

Q. Can you tell me, what are the qualities, or what are the criteria used by you in selecting a job steward?

A. Well, the way I try to pick a steward is to -- I try to pick someone that's capable of handling the grievances, and can handle it

[RT 293] \*

honestly, fairly, and resolve it; and if you can't, well, then, to bring it back to me to handle it.

Also, he should be a fairly competent man for that particular jobsite, for that type of work.

Q. You mean workwise?

A. Workwise, because according to our agreement, the steward is one of the workmen. Along with his work duties, then he has to carry out the functions of a steward, along with his work duties; normal work duties.

Q. Are there any other qualities, any other personal qualities that you look for in the man who you send out as the steward?

A. Well, there's different things you look for. It takes a variety of men. It takes different types of people, different types of jobs.

Q. Well, do you want an honest man?

A. Yes.

Q. Or is honesty one of the qualities you look for?

A. Oh, it's a must. Yes, definitely.

But that doesn't always mean you get an honest man. In fact, it's hard to get stewards. It's hard to get carpenters to take the responsibilities of a steward. Most people would rather shun away from it, rather than take the responsibility.

Q. It is, I gather, an additional responsibility --

A. Yes.

Q. -- on the workman?

A. Yes, to some extent it's time-

[RT 294] \*

consuming. It's \* very time-consuming.

Q. Does he get paid any extra for that responsibility?

A. No.

MR. GEFFNER: Is that answer "No"?

THE WITNESS: None. None whatsoever. I'm sorry.

Q. BY MR. HOBART: Does he have to have an ability to communicate with both management and labor?

A. Yes.

Q. In other words, if a dispute does occur, he's got to be the type of person who can talk with management and attempt to resolve the problem with the least amount of difficulty?

A. Yes.

Q. I guess level-headed would be a good word?

A. Yes, very good.

Q. Now, you indicate that in the dispatching of a man to a job as a steward you look for these qualities. Now, can you tell us if there are any other requirements besides finding a man who meets these qualities; any other requirements on you in selecting the job steward? By "you" I mean the business agent.

A. Well, this is a difficult question. I would say unless they skip something that's normally -- the reasons I give you in picking a steward is probably the main reasons. I'm sure there's some exceptions.

Q. Okay. But I'm referring to, is there any requirement that the man who is dispatched as a steward, that he must come off of the work lists, for example?

[RT 295]

A. No. No, there's no requirement for that.

Q. So he can be selected at random, according to the business agent who is charged with the responsibility of appointing the steward?

A. Right. In fact, many times you have to switch stewards from job to job because of personality problems, or could be the supervision's quality, or there's many reasons. You might ask two stewards to switch jobs, and it works out beautifully, where before it was unworkable.



PAGINATION ERROR

TEXT IN SEQUENCE

Q. Well, is it within the province of the business agent to send a man out on a job as a steward, even though that man may be, we will say, on the last page of seven or eight or ten pages of the unemployment lists?

Can he pick a man from down below there, and skip him over all the other men above him on that list by labeling him a steward, and sending him out on that job?

A. Sure, definitely, because most stewards are going to be working.

There's only 50 percent of our jobs that have stewards, anyway. You can't get stewards to take the jobs -- the duties of a steward, so, consequently, most jobs have no stewards; none whatsoever.

Q. Now, can you point to any written document that allows the business agent this right to dispatch anyone he wishes as a steward?

A. Well, I can't recall of any document, other than in our little Los Angeles bylaw system, that the business agents have the right to pick

[RT 296]\*

the steward. Other than that, \* I don't know if there's ever been -- I'm sure, to the best of my ability, that it's just the type of thing that's always been.

Q. When you say the Los Angeles bylaws, what bylaws are you referring to?

A. Los Angeles County District Council of Carpenters. If there's any document, I'm sure it would be in that.

Q. I have before me a copy of the Los Angeles County District Council of Carpenters and Joiners Trade Laws that I think was in effect during the entire period of 1967 through '69, and reading from page 32, section 43 says:

"The first member starting to work on a job or in a shop shall notify the Business Representative of the Local Union in the area within twenty-four hours; he shall then act as Steward until the arrival of the Business Representative, who may then appoint a Steward...."

Now, my question is this: Isn't it true that the business agent's responsibility in selecting a steward, under the rules of the Los Angeles District Council of Carpenters and under the Local 25 rules, is that he must select a carpenter who is on that job, and until he does, the first carpenter is considered the steward -- first carpenter on the job is considered the steward until the business representative comes out and selects someone else for that job, if a change is to be made?

A. Well, the first carpenter on that job

[RT 297] \*

naturally \* assumes the responsibilities -- or he's liable for the responsibilities, I should say. However, most carpenters won't assume those responsibilities, and they refuse to take the responsibilities of a steward. Consequently, each local union has their own type of steward's program.

I can't speak for the rest of the local unions. I can speak of 25's, because I think we have one of the best steward's programs in the country; but the steward's program goes back to the beginning of the brotherhood.

Q. Well, my question is, can you point to anything in writing which tells you that you can avoid, through the appointment of a steward, the carpenters' hiring hall procedures -- where is it in writing that gives the business agent the authority to take some man out of order, and title him steward, and let him jump over all the rest of the people ahead of him on the list, and send him out to work? Where is that authority set forth in writing?

A. Well, that I couldn't answer you. This is something that, like I say, it's always been that way, and this is the way I was instructed on picking them.

Q. Who instructed you in that way, Mr. Scott?

A. Something I have always know, as long as I have been in the brotherhood.

Q. You say you were instructed in that manner. Who was it that instructed you that you had this authority --

A. From my experience as a carpenter.

Q. My question is who?

A. I couldn't tell you who. Anywhere I

[RT 298] \*

ever worked, \* that's the way the local union that had jurisdiction --

Q. Back in the days of Blackie Daley, when he was a business agent and you were just a working carpenter, Mr. Daley kept a certain group of people working fairly regularly by labeling these people stewards, didn't he?

MR. GEFFNER: Your Honor, I object to that question.

Mr. Scott can't answer a question involving Mr. Daley, when Mr. Scott was not in office.

MR. HOBART: I can phrase the question unobjectively.

THE COURT: Well, I think you should first find out if he knows about Mr. Daley's practices.

MR. HOBART: Surely.

Q. Mr. Scott, did you ever work as a steward during 1967?

A. Yes, I did.

MR. GEFFNER: Mr. Scott, I can't hear you.

THE WITNESS: Yes, I did.

Q. BY MR. HOBART: Who appointed you as a steward in 1967?

A. I'm sure it was Ben Fenwick.

Q. Did Blackie Daley ever appoint you?

A. Yes, I think Blackie also appointed me as a steward.

Q. And how about Joe Wilk?

A. Yes.

Q. It probably wasn't Fenwick, was it? He didn't take office until sometime in 19- --no,



he was in 1967, too. I take that back.

[RT 299]

At any rate, all three of them on occasion appointed you as a steward on particular jobs; is that right?

A. Correct.

Q. And back during those days did Blackie Daley have what we would call the stewards' meetings, where you would meet in the evening and you would have dinner, and sit around, and you would discuss the responsibilities of stewards, and so forth?

A. Yes.

Q. And the people, by and large, who attended those meetings -- by the way, they signed a little document called "Stewards' Meeting"? They'd sign with their name, their address, and telephone number when they went to those meetings?

A. Yes.

Q. And you signed those lists when they had them, didn't you?

A. (No audible response.)

THE COURT: We can't get --

THE WITNESS: Yes.

Q. BY MR. HOBART: Now, do you have an opinion as to whether most of those men who attended those evening functions, these stewards' meetings, these dinners, whether these men, as a whole, were regularly -- that is, virtually constantly employed?

MR. GEFFNER: Your Honor, I object. Mr. Scott's opinion in this regard is not material.

THE COURT: Let's have the question read.

[RT 300]

(Question read.)

THE COURT: I will overrule the objection.

THE WITNESS: Yes, I would assume that they would be. Yes.

Q. BY MR. HOBART: Now, using yourself as an example, during those days were you dispatched as a steward by any of the business agents at that time, even though your name was not next in order on the lists?

I'm sorry, I didn't hear you.

A. Yes.

Q. All right. So when you say you learned that it was the practice of the local to dispatch people as stewards even though they were not high on the list, that is, next in order, I would assume that you learned this, then, from your predecessors in office, Mr. Daley, Mr. Wilk, Mr. Fenwick?

A. No.

Q. Did you learn any part of it from any of those three?

A. No. As long as I have been a carpenter, that's the way it's always been. Each local union had their stewards' programs, and then that local union sent their stewards out on the jobsite.

It takes a different type of carpenter to be a steward. As I said before, very few carpenters are willing to take the responsibility of being a steward.

Q. Do I understand you correctly, when you say that it's simply a policy that has long been in existence, as far as you know, and that

[301] \*

also, as far as you know, there's \* no written authority for the business agent to dispatch people out of order as stewards?

A. For as long as I've known, the brotherhood has insisted on a good stewards' program.

Now, the United Brotherhood -- not only the United Brotherhood of Carpenters, but I think all the unions of other organizations.

Q. My question is, are you saying that it's just been a practice, as far as you know?

A. As far as I know, yes.

Q. Okay. My next question is, can you direct me to any authority that contradicts the carpenters' hiring hall procedures, which tells you to take them off the list in order, with the minor exceptions that we have already discussed, because you decide to label them a steward?

A. No, other than there, again, you have to use common sense, because if you've got a job where you need a steward, you know, then you've got 10 men on that job that wouldn't want to be a steward, and consequently, you're going to have to come up with a steward somewhere, if it looks like you need one.

Q. You are talking about a job where there could be trouble, something out of the ordinary; is that right?

A. Well, no, not necessarily.

Q. Are you telling us --

A. Okay, it could be out of order, or if it's a large job, naturally, you need a good steward on that type of job.

[RT 302]

Q. Well, if you had a large job, and you are dispatching 25 men to a large job, are you stating that of those 25 carpenters who you send out, that it is necessary, as a rule, to pick somebody else lower on the list, or who hasn't even signed the list, and assign them out as a steward?

A. As -- because they are competent?

Q. Yes.

A. Oh, yes.

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Q. BY MR. HOBART: Under the agreement, Master Labor Agreement Between Southern California General Contractors and United Brotherhood of Carpenters and Joiners of America, that agreement sets forth the dispatch rules that are to be followed by the union, does it not?

A. Yes.

Q. And one of the articles indicates that the local unions shall establish and maintain open and non-discriminatory employment lists for the

[RT 303] \*

use of workmen \* desiring employment on the

work covered by this agreement, and the workmen shall be entitled to such use of these lists free of charge, and it also states further on that the following order of preference shall be granted.

It says that a person can be requested under the circumstances we have already discussed, and then it indicates that as the next order, "Workmen whose names are entered on said lists and who are available for employment."

Do you know of anything in the Master Labor Agreement that allows the business agent to employ people who are not next in order on those lists as stewards; send them out as stewards?

A. No, other than the exception of the stewards' system, which is, basically speaking, some of our working personnel of the organization.

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[RT 322]

Q. I'll be glad to rephrase it.

Is the purpose for allowing them to make the choice so that a carpenter who has worked his way to the top of the list can get the best job available at the time, if he wants it?

A. Yes, he has that choice.

Q. And a denial of that choice to him, then, would be in violation of the standard practice of the union, as you understand it to be?



A. Yes, but you remember, getting back to that dispatch procedure, there was a lot enters into this.

Now, if a carpenter has been dispatched to that job previously, and say, terminated, and the contractor calls again for X amount of carpenters for that same particular jobsite, then he might state that he doesn't want any of the carpenters that was dispatched there before; then, consequently, you couldn't dispatch them. So there's so many things involved.

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[RT 421]

#### REDIRECT EXAMINATION

Q. BY MR. HOBART: You indicated, if my notes are accurate, Mr. Scott, you said back in 1967 and '68 that carpenters of the local didn't have any clerk in there to watch the book during the day?

A. Correct.

Q. Do you recall the name of Evelyn Folick?

A. Yes, I do.

Q. What was his title?

A. She. At that time she was an assistant to the financial secretary's office.

Q. She was a clerk there in the union, wasn't she?

A. Yes, a separate office.

Q. She did clerical general duties, as well, didn't she?

A. Yes, she did.

Q. For example, she took the orders in if they came over the telephone, if they came in in the afternoon?

A. Yes, she did.

Q. So she was physically present, at any rate, wasn't she?

A. Yes.

Q. And after her was a woman by the name of Elizabeth Carson?

A. Yes.

[RT 422]

Let me clarify that.

Q. Help yourself.

A. Evelyn worked in the financial secretary's office. When I became business agent my partner, Ben Fenwick and myself,

hired Liz Carson in the business office -- actually had two girls -- so when Liz worked there, that was the first time they had a girl in the business agent's office.

Q. Can you point to any particular time when that book was -- when you went out in a given morning, where you'd inspected the book and made some sort of either mental or written notations of what boxes the men had checked, and who was on the list, then when you came back in the afternoon, you rechecked the book and you found some discrepancies? Could you give us some example of what date that occurred?

A. No, I couldn't give you one date, because it wasn't that important to take note of it.

Q. All right. You didn't find that happened very much, where men had lined out other members' names, put check marks for them indicating work that they really weren't competent to perform?

A. It was -- you found it quite often during a certain amount of areas, yes.

Q. You wouldn't have allowed that to happen without disciplinary action against the men who did it, would you?

A. If you knew the person.

Q. Well, if you saw a man sneak in, if you saw a name there that wasn't there before

filling a blank spot, or something, you would certainly know who it was, wouldn't you?

[RT 423]

A. Yes, you would.

Q. Tell me how many times you brought disciplinary action to somebody in that category?

A. I couldn't really tell you. I've brought it out and mentioned it to the carpenter.

There was times I scratched him off the list and put him at the bottom.

Q. Can you tell us who one of those was, so we can get an example from the list of who you are referring to here?

A. Like I say, it's hard to remember these things.

I do know of one carpenter that I did it to, yes.

Q. Okay.

A. That I recall.

Q. When did that occur?

A. Probably a couple of years ago.

Q. That's one. Can you tell us another one?

A. No. Like I say, it's too hard to remember that type of thing. You have too many things on your mind, too many pressures.

Q. When a man comes in and strikes another man's name off that list, that's a pretty serious offense, isn't it? It's depriving him of work, in a sense, isn't it, or attempting to?

A. Depriving someone else, yes.

Q. It would be serious enough, if it came to your attention, that some sort of charges would be filed against that man, I assume?

A. Well, yes, it is; but everything is

[RT 424]\*

time-consuming. \* You have to remember the time you file the charges, the time you present it to the trial board. You're talking about quite a bit of time.

Q. So, in other words, you can think of one time, definitely, where you found somebody sneaking in, and you struck his name; you can't think of any more specific ones, even in your own mind, and you can't point us to any specific incidents that may be reflected in these sheets that we have in front of us?

A. Yes, now that I get thinking of this, I do recall. In fact, I remember quite well how I handled it.

Q. Okay. What was the date, or about, so we can check these sheets, and you can point it out to us?

A. '68, '69, '70, '71.

Q. All right, give us one in '68.

A. Give you one carpenter?

Q. Yes.

A. Okay. I didn't make a notation of it, what I did. If you remember how I described the way we took roll call, what I did, was the minute the man or the carpenter got in front of me, then I'd tell him to go to the end of the line, or --

Q. That is an attempted sneak-in?

A. Yes. That's how I handled it.

Q. Okay. Who was the man?

A. Well, there are several of them. Several of them.

Q. Name the several men, or as many of them as you can recall.



[RT 425]

A. I don't think it -- I really don't think I can sit here and honestly name you name for name. I could probably come up with a hundred names, if I really wanted. I don't think that's necessary. I'd have to sit here --

Q. I'm only asking for two or three of them.

A. I can sit here and name -- I can name Dick Hill. I know that for a fact.

Q. You are saying on some occasion he signed the list where he shouldn't have?

A. Sure, I'm quite positive. I made him wait his place several times.

Q. All right. Can you tell us where that occurred, where he signed it and you had to change?

A. '68, '69.

Q. Well, what month? We have records for all of '68 here, Mr. Scott. If you can direct us to a specific month, then maybe we can find the week.

A. It was such a small incident that it wasn't worth my time to make a notation of it. Usually you'd verbally tell him to take his turn.

Q. Mr. Scott, I'm not referring to those small incidences where they would get out of place, two or three or four, or maybe five or six. I'm talking about when a man came in and signed the list during the day when nobody was around, snuck his name in; not the situation you're talking about now, when you are at the window writing out the book.

I'm talking about the situation where you weren't there. You told us the books were left

[RT 426] \*

alone all day, and \* all things could have occurred. I'm asking you to give us an example of one.

We have all of 1968 records here, as far as the out-of-work records -- sheets right here, so if you can direct us to one, to tell us what you are referring to.

A. It's not what I'm referring to. What you are asking me, I didn't make notations of it.

I do know for a fact it did happen many times over a four-year period. Not one day, but over a four-year period weekly, by many carpenters.

Q. You are talking about situations where you came in in the afternoon, after examining the books in the morning, then you noticed some changes or discrepancies in the afternoon, and you took some sort of remedial action? That's

the sort of thing you are talking about?

A. Yes. That was the whole purpose of my changing the roll call system, because it was an unfair system, I felt.

MR. HOBART: I will move to strike that answer as being unresponsive, your Honor.

THE COURT: Yes, it is.

Q. BY MR. HOBART: Mr. Scott, can you point to one occasion where you came back in the afternoon, you found somebody's name signed in improperly where it shouldn't have been, that something that occurred presumably in the afternoon for the year 1968? Can you tell us one specific item?

A. No, I cannot; but I can tell you this. I'm sure I can sit there and study those books, and I can point one out.

Q. We will all be here a long time. You  
[RT 427] \*

will have the opportunity.

A. All right.

Q. Can you point to some situation where somebody in the afternoon, when nobody was guarding these books, may have lined out somebody's name, or somehow marked unmarked

boxes for him, offhand? Do you know any incident in 1968 when that occurred?

A. No. Again, I didn't take notations. I'd have to check those books to pick one out.

Q. You indicated there was no reason to keep these white slips, these order slips, in your testimony just a moment ago; is that correct?

A. Yes.

Q. Mr. Scott, can you tell me, for the years of 1967 and 1968, whether there exists any written documents, or grouping of documents, that a person who claims an illegal dispatch was made -- or that numerous were made -- how could he prove that illegal dispatches were made from whatever documents exist?

MR. GEFFNER: Your Honor, I object. That question asks for a conclusion, and is argumentative, as well.

MR. HOBART: I don't think it does, your Honor.

THE COURT: I think it is cross-examination. Go ahead.

THE WITNESS: Repeat the question, please.

MR. HOBART: Yes.

Q. What official documents exist, if any, that we can go to to confirm that a particular dispatch in 1967 or '68 was completely illegal, that is, it was a bona fide request?

[RT 428]

We've got the request forms, and we've got some other notations. What documents exist, so we can check now to see whether illegal dispatches had been made in 1967 or 1968?

A. What form of document to go back to prove --

Q. Yes, sir. What documents exist to show -- for example, if you have an employer request, that should be a written document, and that should conform with something, with the work referral slip that says "Request" on it? That would be evidence, wouldn't it? That would prove that that request was made pursuant to a bona fide written request, which is what you have told us is the procedure?

A. Yes.

Q. Now, my question is, since we can't find a good many of these documents -- you say they don't keep them, and there's no reason to keep some of these documents -- what records do exist; what other records exist, or notations, so the person could go back and double-check the business agent's dispatches to see if a given dispatch, or a series of dispatches, were valid

and met the procedures for dispatching?

A. There's no documents or records whatsoever, that I know of.

A carpenter knows where he's at on the book. He knows when it's his turn to be dispatched. Consequently, there's very few times that you'd ever have this type of a discussion with the members.

Q. You're saying the union policy is that if it's of insignificant proportions, substantially

[RT 429] \*

enough so that you \* don't keep the records to maintain a position where you could verify the legality of a given dispatch -- in other words, you don't consider that to be a sufficiently important purpose in order to keep records?

A. I didn't then, but I can assure you now I think different.

The questions you are asking me, there's no way I can answer it. I have no -- for me to even go back right now prior to the time I was a carpenter, I'd have a hard time finding the job sheets of contractors that I worked for. I just don't retain that information.

Q. You know how to get that information, don't you?



A. Sure.

Q. Call the Health & Welfare. They've got records, don't they?

A. Yes, they do.

Q. Now, Mr. Scott, with respect to these records, if you have an employer request, or if you have an order, a phone order, under the rules and regulations, you must give a work referral document; is that right?

A. Yes.

Q. Then the man with the work referral slip goes off to the job. Now, if you go this way, you take his name off the out-of-work sheets, right?

A. Yes.

Q. If we had the out-of-work sheets, the work referral slips -- strike the question.

By the way, the work referral slips, if

[RT 430] \*

the man \* is sent out on a request, the work referral slip has the work "Request," generally, abbreviated on it, doesn't it?

A. Yes, it does, or it has an "R."

Q. Some notation, at least, that it is a request?

A. Or he might even forget to put the "R" on there.

Q. I suppose anything is possible.

Now, this gives us four documents; the white slips, the out-of-work sheets, the work referral slip, the employer request. These are four written documents used in a matter of procedure for ways of dispatching a man out of that hall in 1969 and '68; is that right?

A. Yes.

Q. Now, if any of these documents are missing, for example, we don't have any work referral slips, then we don't have any way to determine whether the word "Request" written on the work referral slip really was a bona fide request, do we?

A. No, but I might add at this time, too, that's not really an accurate record. Many carpenters come and get requests -- work referrals on a request, and never report to the job, changing their mind.

Probably 75 percent of our carpenters are not from our hall, are from some other local. We have had carpenters that have gotten requests as many as three times in one day, and never reported to the contractor.

Q. Listen to my question, Mr. Scott.

If you don't have the employer request form, or some written notation, or other notation

[RT 431] \*

that he made a \* request, then there is insufficient evidence to establish whether or not a work referral that says "Request" on it was, indeed, a written request; is that correct?

A. Correct.

Okay, let me clarify that, then. We do keep these records, and we keep them approximately one year. We've got more records now than I think any local union, as far as keeping records.

MR. HOBART: I will move to strike that your Honor, as being speculative as to what other unions have.

THE COURT: All right.

Q. BY MR. HOBART: But without this document -- to get back to this point, without the employer's written request document, we have no way of knowing whether the name was a bona fide request, or whether somebody had just written the name on there and dispatched the man. That's true, as far as that statement goes, isn't it?

A. Yes, that's correct.

Q. You indicated that a man who signs an out-of-work list, and who does not check a box, that that means the same thing as a man who signs and checks all boxes, or runs a line across all boxes. It means he is available for anything; was that your testimony?

A. That's the way it was explained to me by some people. Some people interpret it differently. I don't interpret it that way.

Q. I am under the impression --

A. Every business agent interprets a

[RT 432] \*

dispatch sheet \* any way.

Q. Isn't it true you interpret that the guy is not available for any work?

A. No, I don't interpret it that way. That was the way it was explained to me.

Q. What does it mean to you, that he's available for all work, or not available for any?

A. It means he was available for all types, is the way it was explained to me.

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[RT 471]

RICHARD T. HILL,

the plaintiff herein, called as a witness on his own behalf, having been sworn, testified as follows:

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[RT 472]

DIRECT EXAMINATION

[RT 518]

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Q. Did you go back to the hiring hall in the ensuing days that followed, at least one more week?

A. I don't think I went much longer back there. I don't know how -- I was getting pretty sick about this time.

Q. Now, we know that on March 27th, Mr. Hill, you had signed the book on page 2.

A. That's right. That's probably the last week I signed the book.

Q. When you signed the book, then, do you recall complaining about certain people signing the book ahead of you and getting jobs, anything of that nature; any sneak-in complaints?

A. I told Daley, and I showed him different ones on the book. I showed him. I picked a name right out to him on the book.

I couldn't do it right here at the time,

[RT 519] \*

but I did \* then. These guys was working, and I asked him how they were getting out to work.

Q. Mr. Hill, in looking at the sheets for March 20, 1967 -- that's the bottom sheet that my hand is on here. Count up, if you would, five places and six places from your name, above your name.

A. One, two, three, four, five, six.

Q. Okay. On the sheet for March 20, who were the fifth and sixth people above your name?

A. Henry Sloan and Bill Midgett.

Q. All right. Is there -- okay. Henry Sloan, Bill Midgett, and Jesse Turner?

A. Yes, three of them.

Q. Between those names and your name do you see the name Leopoldo Hernandez or Emigdio Marques?

A. Yes.

Q. Okay. You see them on the March 27th list; is that right?



A. That's correct.

Q. Do you see them on the list of the preceding week?

A. No, they're not there.

Q. Now, Mr. Hill, with respect to these two gentlemen, Emigdio Marquez and Mr. Hernandez, they both were dispatched, according to these records; is that accurate?

A. That's what it shows there.

Q. Do you recall if you had been offered this job at Millie & Severson, it looks like?

A. I don't think so.

[RT 520]

Q. Do you have any recollection of you being offered that job?

A. No, no. I wouldn't know for sure, but I don't see nothing there. The name don't even ring a bell.

Q. Were you offered any job when you went back on the list, prior to the time you terminated --

A. The only job I was offered was the Steelform job that I refused.

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[RT 538]

Q. Mr. Hill, I'd like to show you the out-of-work sheets for May 1, 1967.

Again, they are still being typed, but is it correct that your name is on page 12 at about line 10 or 11?

[RT 539]

A. That's correct.

Q. All right. Now, when you went back to work, or when you went back to the out-of-work list, did you make an effort to obtain employment on your own?

A. I did. I saw I wasn't going to get nothing at the hall.

Q. Well, when you first went back to work, did you make a request of anybody for a special consideration in some manner, for a sick man returning?

A. Well, it's been the practice of the local there. Yes, I made a request of Daley and Wilk, and the whole bunch. I said, "I have been laid up for 30 days, and I'm just coming out of the hospital, and give" -- it's been the practice of that local to put them back on the top of this list when they come back after being sick.

Q. Did Mr. Daley put you at the top of the list?

A. He said, "You can go back to the bottom of the list, and forget about it," and that's all. I just signed my name in the usual place, and forgot about it.

Q. After you had done that, with respect to some other employer, what did you do next?

A. Then I started canvassing the area. I went down to a building under construction over here at 6th and Grand, Simpson-Dinwiddie Construction Company. There were a couple of foremen on there I had knew for years. I worked for them before. I worked for Simpson Company, as well as the Dinwiddie Company. It was a joint venture on this particular building, however.

[RT 540]

Q. All right. You went down to this job -- which building is that in Los Angeles?

A. It would be the Crocker-Citizens, now completed, at 6th and Grand; right between Grand on 6th.

Q. What was it you were attempting to do when you went to that --

A. Secure carpenter work.

Q. To try to get a request?

A. See a foreman there that I know, and get a request -- or see the superintendent, didn't make no difference, whoever was in charge of the job.

Q. Can you tell me the names of the people you saw when you were there?

A. I saw the superintendent. His name was, I think, William Simpson -- no relation to the company. There was a foreman by the name of Curt Gillie I saw there. Different occasions I saw another guy by the name of Larry Buetner. There was a general foreman I talked to by the name of Fred Coukos.

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[RT 542]

MR. HOBART: Your Honor, with respect to the deposition of Charles J. Simpson, which was taken on January 15, 1970, at the construction site of Pacific Gas & Electric Company building, 202 Mission Street, San Francisco, California.

It was taken before Priscilla Q. Loberg, a notary public in and for the City and County of San Francisco, State of California, at which time Mr. Simpson appeared, and at which time I appeared as counsel for plaintiff, and the law firm of Geffner & Satzman was represented by Leo Geffner.

Also present was Mr. Ben Fenwick,  
Business Representative of Carpenters Local 25;

"Q. Will you give your full name for the  
record, please?

"A. Charles J. Simpson.

[RT 543]

"Q. What is your present job and  
capacity?

"A. I am construction superintendent for  
Dinwiddie Construction Company."

I'm going to skip some now, your Honor.  
I don't think it's all relevant. I'm going to go  
next to line 18 on page 2, through line 9 on page  
3:

"I am sure that you have either had  
depositions taken before, or you know what they  
are, but just for the record, let me give you a  
little preliminary data.

"First off, as you know, this deposition  
is taken in an informal atmosphere, but you have  
been sworn to tell the truth and your testimony  
here is under the same sanctions, perjury, et  
cetera, that there would be if given in a court of  
law. Do you understand that?

"A. I do.

"Q. My questions today are going to  
concern incidents relating to Richard T. Hill, my  
client, and they will pertain generally to the  
situation involving Hill being hired or not hired  
on the Dinwiddie-Simpson Construction site back  
in May 1967. Do you understand that?

"A. Yes, sir.

"Q. If you do not hear any of the questions  
that either Mr. Geffner or I ask, or if you do not  
understand them, we will expect you to ask

[RT 544] \*

us to \* repeat them or rephrase them in order  
that you do understand the questions. Do you  
understand that?

"A. Yes, sir."

Next, your Honor, from page 4, line 1,  
through page 10, line 9:

"Q. With that in mind, I will get right  
into the general issues that I want to talk about.  
Prior to May 1967, had you ever made oral  
requests from Local 25 for individual workmen  
to be sent out to the jobsite?

"A. I had.

"Q. And had those requests been honored  
on one or more occasions?



"A. To the best of my recollection, yes.

"Q. Do you ever recall, prior to the 1st of May, any union official telling you that he could not or would not honor any oral request that you had made?

"A. No, I don't.

"Q. Now, on or about May 1, perhaps a day or two before that, did you make a request for four workmen from Local 25, request that they be dispatched to that Dinwiddie-Simpson construction job?

"A. At about that time, yes. The dates are a matter of record which I can't really independently recollect at this time.

[RT 545]

"Q. Does the date of around May 1st sound about right to you?

"A. It does.

"Q. Now, what was the job that you were working on at that time?

"A. Crocker-Citizens National Bank.

"Q. Where was that located?

"A. In Los Angeles, 6th and --

"Q. Olive, would it be?

"A. No, Grand, 6th and Grand.

"MR. GEFFNER: Grand to Hope.

"MR. HOBART: Q. Had that job been in progress for a period prior to May 1, 1967?

"A. Approximately -- yes, it had been in progress for some months.

"Q. And prior to the 1st of May, 1967, had you hired carpenters for that job?

"A. I had.

"Q. Do you have any estimate as to how many months you had been hiring carpenters on that job, prior to May 1st?

"A. Approximately a year.

"Q. I see. During that period of one year, if I understand your previous answer, you had made certain requests for individuals, is that correct?

"A. Would you repeat, please?

"Q. Surely. Prior to May 1st, had

[RT 546] \*

you \* made oral requests for named, individual

carpenters to come out to the jobsite?

"A. I had.

"Q. And do you have any recollection of any of them being denied you?

"A. No, sir.

"Q. At any time prior to May 1, 1967, had any official or member of the Union, that is, Local 25, advised you that you could not make requests for any of the following reasons:

"A. Because the Dinwiddie-Simpson job was a joint venture, and therefore nobody had worked for that joint venture prior to that time? Had that ever been given to you as an excuse for rejecting your request for carpenters?

"A. Not to my recollection.

"Q. At any time prior to May 1, 1967, had an excuse been given - and this will be 'b' under my itemization - on the basis that you had requested more than 25% by name for that jobsite?

"A. Not to my recollection.

"Q. Had the figure or the general discussion of the 25% quota been brought to your attention at all on that jobsite prior to May 1, 1967?

"A. By Union representatives?

"Q. By Union representatives.

"A. Not to my recollection.

[RT 547]

"Q. I take it from your answer that you may have had some information regarding that quota from Management's side.

"A. Yes, right.

"Q. But no member from the Union or your employer, or agents of the Union, had ever advised you that the 25% quota was being considered, or that they were keeping tabs?

"A. No, sir. We were aware of that possibility, but it seemed to cause us no trouble.

"Q. Do you know as a matter of fact whether your requests did or did not exceed the alleged quota of 25%?

"A. Not exactly, no.

"Q. Was it your policy at that time that unless the Union raised the issue, you were not going to spend any time on the mathematics, figuring it out for yourself?

"A. It was our policy to keep in the area of 25%, not necessarily exactly; below.

"Q. Was it part of your policy that in the event you exceeded the 25%, you were going to leave it to the Union to bring it to your attention, or were you going to search it out for yourself?

"A. I don't quite understand.

"Q. Let us say that you hit 27%. Would it have been your policy at that time to

[RT 548] \*

check \* your own records to determine that you had exceeded the 25%, or was it your policy to let the Union bring it to your attention, that you were over 25% in your requests?

"A. It would be my policy to let the Union bring it to my attention. However, I didn't want to be very far out of line. A few percent would seem reasonable, and I thought the Union would also think it reasonable, if I was within the general area of 25%.

"Q. During that period that you were the superintendent, prior to May 1, 1967 and subsequently, were you aware of the general nature of the Union Hiring Hall Procedure? And by that I mean that if you did not request people by name, that they would, or were supposed to, send people to you off the top of the list as they

fit the category requested?

"A. Yes, sir, I was aware of that.

"Q. Now, around May 1, 1967, did you make a request for certain workmen where that request was not honored?

"A. I did.

"Q. To the best of your ability to recollect the names of the individuals who were on that request, or who were requested, will you tell us who they were?

"A. I remember Mr. Hill and Mr. Wallace.

[RT 549]

"Q. Do you remember how many people were requested totally?

"A. I believe it was four.

"Q. And Mr. Hill and Mr. Wallace were two of the four?

"A. Yes, sir.

"Q. Was that request a written request, or was that an oral request given by you?

"A. I believe that was a verbal request.



"Q. When you would make a verbal request, was it your practice to call the dispatch office either that morning or the evening before?

"A. It was.

"Q. And do you recall if your call went into the Local 25 office the evening before, or was it that morning that you wanted the men?

"A. I am sure it would be the day before. It was not my practice to call in the same morning that I wanted men.

"Q. I see. When you called into the office, did the person you were talking to identify himself or herself to you by name?

"A. I believe never.

"Q. You have a recollection at this time as to whether it was a man or a woman with whom you discussed that oral request?

"A. No, sir, I don't.

"Q. Regardless of whom you talked

[RT 550] \*

with, \* was there any indication at that time by the person you talked to that your request would not be honored?

"A. I believe not.

"Q. Was there anything different from prior oral requests that occurred with that particular oral request?

"A. No, there was nothing unusual about this request.

"Q. I gather from your answer that nothing occurred in your conversation, or in the general request procedure made by you on that day, that made it unusual in any respect; is that correct?

"A. That's my recollection.

"Q. Disregarding the two names you do not recall, on the next day after the request was made, did either Mr. Hill or Mr. Wallace come to the jobsite?

"A. To work?

"Q. Yes.

"A. No, sir.

"Q. My question, to be more direct, was, or should be, were either of them dispatched to work for Dinwiddie-Simpson Construction Company on that day?

"A. No, sir.

"Q. What were the conditions,

[RT 551] \*

circumstances \* and facts surrounding your request for Mr. Hill for that jobsite, at or around May 1, 1967?

"A. His name was given to me by my Assistant Superintendent.

"Q. What was his name?

"A. Mr. Fred Coukous, C-o-u-k-o-u-s.

"Q. Or something like that?

"A. And I similarly relayed this name to the Union, which was the normal practice on that job.

"Q. Did you know Mr. Hill personally?

"A. I did not.

"Q. Had you met him before that, before the day you had requested his name?

"A. No, sir.

"Q. In regard to whether or not you had met him before, do you have a recollection of his coming out to the jobsite within a day or two days prior to the day he was requested at all? Do you have any recollection of that?

"A. I recall him coming to the jobsite, but at this time it seems to me it would be after I requested him and not before.

"Q. At any time after you made the request for Mr. Hill, or at any time before, did you learn how Mr. Coukous happened to obtain his name?

"A. Yes. Mr. Coukous was my

[RT 552] \*

Assistant \* Superintendent and he had several carpenter foremen working under him. And one of the foremen asked Mr. Coukous to pass along this name, Mr. Hill's name, for my request for another carpenter.

"Q. To your best knowledge and information, who was the foreman making that request of Mr. Coukous?

"A. I don't know now, and I'm not sure that I ever knew.

"Q. Do you have a recollection of Mr. Hill coming to the jobsite one or more days before the day you requested him, and saying something to you to the effect that, 'It would sure be nice to work here,' something along those lines? Does that refresh your memory at all, my saying that?

"A. No, sir, it doesn't."

Going right on, your Honor. I said I'd stop at that point, but there's just two more questions here.

THE COURT: Well, I suggest you finish what you were going to read, then we will take our recess, and Mr. Geffner may take that recess time to select portions he may want to read.

MR. HOBART: All right, fine.

THE COURT: Go ahead.

MR. HOBART: No, I have more. I was saying I was going to stop on page 10, line 9 --

THE COURT: I know, but you are going on.

[RT 553]

MR. HOBART: Yes.

Well, there are several itemizations. The majority of it is done, but there are still fairly lengthy parts; so if your Honor wants to take the break -- or I can continue, whatever you wish.

THE COURT: Well, I think you might as well continue, then we will take a break.

MR. HOBART: All right.

At line 14, on page 10:

"Q. Did you learn the next day after the request had been made to the Union that the men you requested were not dispatched?

"A. I did."

Now, I'm going to skip, your Honor, over to page 11, line 19 to line 25:

"Was the first conversation with any official of the Union that you have a recollection of, pertaining to the requested men or any of them --

"A. It was a few days after they were requested that Mr. Daley came on the job. And at that time I approached him on the possibility of getting one of these men on my job, dispatched to my job.

"Q. Who was that one man?

"A. That would be Mr. Wallace."

Now to page 12, line 10 through line 21:



"Q. During this interim from the

[RT 554] \*

time \* you made the request to the time Mr. Daley came to your office, did you learn through the grapevine about some of the political personalities and goings-on within Local 25?

"A. Well, I learned that Mr. Hill was a political opponent of Mr. Daley. How, as far as 'goings-on within the Union,' I wasn't a party to any of that.

"Q. Do you recall from whom or how you learned that Mr. Hill was a political opponent of Mr. Daley's?

"A. I believe that Mr. Coukous got that information from his men in the field and relayed it to me."

Page 13, line 17 to page 14, line 10:

"Q. Then I take it within the next few days Mr. Daley came out to the jobsite?

"A. That's right.

"Q. And when he came out, what did you say and what did he say with respect to the men who had been requested, or any one of them?

"A. Well, knowing that there was this political situation which was -- I didn't want to

get involved in, I simply inquired as to the possibility of getting Mr. Wallace on the job. And he replied, in effect, that yes, he could arrange that.

"Q. Did he make any comment about the  
[RT 555]

other four being rejected, or why he did not send you Mr. Wallace?

"A. You mean the other three?

"Q. Yes.

"A. He simply said words to the effect that Mr. Wallace was going with the wrong gang.

"Q. And based upon what you had already learned from Mr. Coukous, did you form some conclusion about what he meant by that, or some opinion?

"A. Not really.

"Q. Did you form an opinion that Mr. Daley meant that Mr. Hill was a political opponent and, when you put them all together, Mr. Wallace was in the wrong gang?

"A. I concluded that he meant, gee, I will ask for those other fellows because that's the only thing I was interested in, or could be interested in. I certainly wasn't interested in the Union politics angle of it."

At line 21, your Honor, on page 14, through 22 on page 15:

"A. Yes. I concluded that he meant by his remarks, 'Gee, don't ask for these other three fellows.'

"Q. But if you wanted Wallace, that would be all right?

"A. Correct.

[RT 556]

"Q. Had you ever had any meeting such as that with Mr. Daley prior to that time, any conversations with him, whether face to face or over the telephone?

"A. Oh, yes, we have had many occasions. We have on many occasions met on the job, both prior and after.

"Q. When you met with Mr. Daley on these various occasions, what was your opinion as to his rank within the Union, within Local 25?

"A. I understood he was the Business Agent, or possibly should say the Chief Business Agent.

"Q. As far as you were concerned, he was the number one man to deal with in the Union?

"A. That is correct."

Line 15, the same page, 15:

"Q. Now, either before or after that meeting you had with him, the one we have just talked about in May 1967, did Mr. Daley ever suggest to you names of workmen to request?

"A. Not to my recollection, but it certainly wouldn't be unusual.

"Q. What do you mean by that?

"A. I mean union officials, at the start of a job, often tell me, 'Gee, we have a good man in there,' or 'A couple of good men in there. Can you use them?' That's very common."

[RT 557]

Page 20, line 7 through 21, referring, again, to Daley:

"Did he say to you, or imply to you in any way that you could understand, that he was not aware of that request?

"A. There was no implication one way or the other in that regard.

"Q. Well, in referring to the gang, he must have been referring to something else, unless you had raised the issue. Do you recall?

"A. I think I should modify that statement by saying that his reference to the 'gang' would indicate that he was aware of the request.

"Q. You had --

"A. There was no discussion, no mention of it.

"Q. Your discussion was centered around Roy Wallace?

"A. That was my question to him.

"Q. What is your best recollection of what you said to him about Roy Wallace?

"A. I can only recall the substance of it, that I personally knew Roy Wallace and I would like to have him on my job, if he could be dispatched.

"Q. Did you ask him in so many words why Roy Wallace had not been dispatched to you?

"A. No, sir, I did not. I would

[RT 558] \*

consider \* that an irritating question and I wouldn't do it.

"Q. It would just make things more difficult to get Roy Wallace by raising that sort of a question?

"A. I think it would put Mr. Daley on the spot. He would either have to refuse to answer me or explain his actions. And I felt it was out of order for me to get into that aspect. And I purposely would stay away from asking about problems that they were having among Union people."

Page 21, line 14:

"Q. And you had not at that point raised the issue of the fact that you had put Mr. Wallace in with three other people previously?

"A. I don't believe I had.

"Q. So then that would be a spontaneous reply on Mr. Daley's part when he referred to that gang?

"A. I believe it would.

"Q. With respect to Mr. Wallace, did he come out to the jobsite and ask you to request him?

"A. He did.

"Q. And did you request him?

"A. I did.

"Q. And did anybody ever raise any objection to you that he had come and asked you directly for a job?



"A. No, sir.

[RT 559]

"Q. When you had the conversation with Mr. Daley about requesting Mr. Wallace specifically, did he raise that as an issue at all?

"A. Raise what?

"Q. That Mr. Wallace may have asked you directly for a job.

"A. No, sir.

"Q. As a matter of fact, that was a fairly common practice with the members of the Caprenters' Union, isn't that true?

"A. It is."

I believe I have nothing further from the deposition, your Honor. At least, nothing I can see on a quick summary.

THE COURT: All right, then we will take a 10-minute recess and resume the reading, if the defense wants to read any parts of this deposition.

The jury is given the customary admonition.

(Recess.)

THE COURT: All right. Do you have anything to add?

MR. GEFFNER: I'd like to read a portion of the deposition, your Honor, that I don't believe was read by Mr. Hobart.

MR. HOBART: Well, your Honor, there was quite a bit in the deposition I didn't read.

THE COURT: Yes.

MR. GEFFNER: This is Mr. Hobart questioning Mr. Simpson, starting on page 15, line 11:

[RT 560]

"Q. Now, during any other prior meetings or conversations with Mr. Daley, or any subsequent meetings or conversations with Mr. Daley, did you ever discuss with him the request procedure at all?

"A. No, sir.

"Q. Now, either before or after that meeting you had with him, the one we have just talked about in May 1967, did Mr. Daley ever suggest to you names of workmen to request?

"A. Not to my recollection, but it certainly wouldn't be unusual.

"Q. What do you mean by that?

"A. I mean Union officials, at the start of a job, often tell me, 'Gee, we have a good man in there.' or 'A couple of good men in there. Can you use them?' That's very common.

"Q. Do you recall ever having Mr. Daley ask you to request Everette Trimble?

"A. I dimly recall that. I believe that's correct, that he did.

"Q. Do you recall the circumstances around that?

"A. Mr. Trimble, when he came on the job, was the steward, and I believe that I had a problem with the steward who was on the job, and I asked Mr. Daley to make a change. And this was part of the procedure of getting a new

[RT 561] \*

steward \* for me, was for me to ask for Mr. Trimble. That is my recollection.

"Q. You were dissatisfied with your steward on the job, is that correct?

"A. That is correct.

"Q. And you asked Mr. Daley to change stewards, is that correct?

"A. In effect, yes."

Going over to page 17, starting at line 16:

"Q. Can you recall on any jobsite at any time any other business agent, whether it be Mr. Daley or anyone else, suggesting to you, for one reason or another, the names of any particular workmen to request?

"A. No, I don't recall that.

"Q. You recall that it has happened, but you just don't remember the people who asked you and the people requested?

"A. Now you are talking about that job in Los Angeles?

"Q. I am talking about any union job at all now.

"A. Anywhere?

"Q. Anywhere in Los Angeles.

"A. Oh, well, even so -- No, I don't recall any names or any specific instances.

"Q. But you do have a recollection that it occurred?

[RT 562]

"A. As the statement there says, it's quite a common practice.

"Q. Who else would a union representative make this request of on a jobsite? Let's say like on the Dinwiddie-Simpson jobsite. Would a union representative make that request of anybody else? In other words, did anybody else have the authority to make requests?

"A. Mr. Coukous would have the authority to on that job.

"Q. Could he make them direct to the Union?

"A. He could.

"Q. Or would you have to go through --

"A. He could have.

"Q. He could have made them direct?

"A. Yes, sir.

"Q. Have you discussed that matter with Mr. Coukous?

"A. I don't recall. We had a very good working relationship there, and it would not have been out of order for him to do so.

"Q. Is Mr. Coukous still in Los Angeles?

"A. I believe he is.

"Q. Still with Dinwiddie?

"A. No, the William Simpson Construction Company.

[RT 563] \*

"Q. Were you and he of equal position, \* then?

"A. He was under me.

"Q. Let me see if I can summarize accurately what we have just been discussing. The request for specific names by union officials does occur periodically, but you have no specific recollections of the individuals involved on either the requesting end or the union official end.

"A. Outside of Mr. Trimble, that is correct.

"Q. In your conversation with Mr. Daley, did you reinforce the opinion that you had that there was political animosity between him and Mr. Hill?

"A. It was not discussed in those terms at all.

"Q. Mr. Hill's name was never brought up?



"A. I believe not."

Over to page 29, line 11 -- line 12:

"Q. Now, when the four men were requested, did you have personal knowledge of any of the four men, except Mr. Wallace?

"A. No.

"Q. But you knew Mr. Wallace?

"A. I did.

[RT 564] \*

"Q. He worked for the company on prior \* occasions?

"A. No, he had not worked for us before.

"Q. He was just a personal acquaintance? Let me rephrase the question. You knew him to be a competent carpenter and you wanted him on the job, is that correct?

"A. I didn't know -- Well, he had worked for the William Simpson Company before, and the job he was on terminated and an official in the Simpson Company asked me if I could arrange to put him on my job. However, I also knew Mr. Wallace personally.

"Q. Do you know whether Mr. Hill had ever worked for Dinwiddie Company prior to

May 1, 1967?

"A. No, I don't know.

"Q. You have no knowledge?

"A. And I still have no knowledge.

"Q. Have you knowledge as to whether he had worked for the Simpson Company prior to May 1st?

"A. That I don't know, either. I probably did know at the time this was all stitched up, but I have forgotten now. I don't know.

"Q. Now, as I understand your testimony, after your request of the four men, which was made verbally by a call to the Union, you then gave the timekeeper the list of names of the men so the timekeeper would have some record.

"A. I don't believe I said that, and

[RT 565] \*

I \* am not sure I did it. But I am sure the timekeeper would know that I had an order in for four carpenters.

"Q. The timekeeper may or may not have given their names?

"A. That is correct."

MR. HOBART: I think you should re-read that question.

MR. GEFFNER: All right.

"Q. The timekeeper may or may not have given their names" --

MR. HOBART: "...have been given their names."

MR. GEFFNER: "The timekeeper may or may not" -- I'll try once again.

"The timekeeper may or may not have been given their names?"

"A. That is correct.

"Q. When Mr. Daley came to the jobsite a few days afterwards, if I understand your testimony, the entire conversation related to Mr. Wallace, except --

"A. Related to Mr. Wallace, yes.

"Q. You may have been discussing other things, but as far as this problem was concerned --

"A. It was a very short conversation, and it related almost entirely to Mr. Wallace.

"Q. You asked whether Mr. Wallace could be referred to the job?"

"A. Right.

[RT 566]

"Q. You did not mention Mr. Hill at all?"

"A. No, sir."

MR. HOBART: Okay, your Honor, if I may pick up where Mr. Geffner left off.

THE COURT: Very well, on page 30.

MR. HOBART: Yes, he left off with page 30, line 24, which is the last question.

Page 31, line 1:

"MR. HOBART: Just one more, Mr. Simpson, with respect to that conversation with Mr. Daley. After he had made the reference to Mr. Wallace being associated with the wrong gang, did you interpret that to mean he was referring to the other three men who had been requested?"

"THE WITNESS: That is correct."

I'd like to read, your Honor, from page 24, line 14, to page 27, line 25:

"Now, again I am going to read you a paragraph or two from your NLRB testimony, and I am reading from page 62, and starting with line 9:

"'Q. Mr. Levy' -- attorney for the Union -- 'In response to a request by the Union, you said that before this incident involved Wallace and Hill arose, that you made oral requests to Local 25 which was honored. You had reference, did you not, to oral requests for dispatch of a number of men, not dispatch of men by name?

[RT 567]

"'A. No, sir, I did not. I had reference to a request of men by name. Now, these requests were usually' -- this is still your answer, now -- 'These requests were usually talked over a little with Mr. Daley or some other Business Agent to see how they felt about it.'"

Back to my question, now:

"As far as enlargement on that statement, what information could you give me? What would the circumstances be?

"A. I can only say at this late date what my general policy is that would seem to fit in with that, and if there are few or no men in the Hall, it is much easier to get many specific requests granted because they don't have to pass over anyone to get them to me. Also, I, on occasion, just to take the pulse of the business

agent, so to speak, to see if -- is he going to be agreeable to a few requests, because I don't like to put in requests and have them turned down flat. When I put in a request, I like to have it in a position of being honored.

"Q. Did you have the practice of checking the pulse of the business agent, so to speak? Was this your practice before the Hill incident or was this the practice?

"A. Yes, that had been my practice for many, many years before the Hill incident.

[RT 568]

"Q. As far as Local 25 is concerned, do you have any recollection of any situation where you had discussed, requested men with any of the business agents?

"A. I can't recollect that now. It quite probably happened, but I just can't recollect.

"Q. Again, from the transcript of your testimony before the NLRB, beginning at line 25, page 69" --

This is a quotation from the NLRB transcript --

"'Q. I believe you testified that on certain occasions Mr. Daley would come out and speak to you about whether or not these oral requests would be complied with, is that correct?



"A. It would be more in the nature that you would approach Mr. Daley at an opportune time and see how he felt about my putting on a couple of men that I had in the wings, so to speak.'

"Does the reading of that more or less refresh your memory on this type of situation with Mr. Daley?

"A. That fits in with my general thinking.

"Q. Would part of your feeling-out of Mr. Daley be to see if he objected to the name of any one or more names of the people you are suggesting?

[RT 569]

"A. No, I believe not. I don't think I would normally mention names or discuss certain persons. I would just say, 'I have a couple of men.'

"Q. I see. Page 72, line 13" -- again referring to quotations from the NLRB transcript --

"Q. Did you know sometimes that you were not going to get a favorable action, that is, with reference to requests given Mr. Daley?

"A. Yes, sir.

"Q. And did Mr. Daley or any of these other business agents ever give you a reason why you were not going to get a favorable action?

"A. I don't recall that any was ever given."

My question:

"Does that mean there were occasions that you got unfavorable reactions from Mr. Daley or some other business agents about a proposed person or two?

"A. Yes, sir.

"Q. And that you just do not remember what the reason was, or do you have any recollection of what any reason was, prior?

"A. Yes, a common reason is that, 'We have so many men out of work that we just can't do it at this time.'

[RT 570] \*

"Q. Aside from that, do you recall any \* other reason given you?

"A. I don't remember any other specific reason being given.

"Q. Do you, even up to this date, have any independent understanding of the procedure

whereby a steward is appointed on a job, aside from what you have been told by business representatives? Have you read it in black and white anywhere?

"A. Yes, it's spelled out in our Agreement.

"Q. There is nowhere in that Agreement, is there, that you know of, Mr. Simpson, where in order to change stewards they have to send out a new man?

"A. I don't believe there is anything like that in the Agreement, no.

"Q. They have a right to appoint a steward after a man has been dispatched to the jobsite, isn't that basically your understanding?

"A. Yes, sir.

"Q. It would not be necessary to send out a new man to replace a steward, particularly someone from the bottom of the list or elsewhere, in order to get a change of stewards?

"A. I believe that's correct."

Q. BY MR. HOBART: Now, Mr. Hill, when you left the Dinwiddie construction site,

[RT 571] \*

you have told us that your frame \* of mind was that you had a request coming in; is that correct?

A. That was my feeling on the matter, yes.

Q. Did you that day, or any other day, make any contact with the union office concerning that matter?

A. Yes, I went right up in the union hall next morning with my tools, ready to go to work. I got by the dispatch window, and Mr. Daley --

Q. Prior to that, did you have any conversation with Evelyn Folick?

A. Oh, yes. She's the office secretary there.

Q. When was it that you had that conversation?

A. Same time, in the morning. She was there.

Q. Was that before or after Mr. Daley's --

A. Before I talked to Mr. Daley -- or after, I don't know which. See, they are all in the same office. I don't know whether it was before or after.

Q. All right. With respect to Mr. Daley, was your name called that morning of May 1, 1967, to go to work on the Dinwiddie-Simpson job?

A. No, it wasn't. There were men dispatched to that job, but my name wasn't among them.

Q. Did you inquire of Mr. Daley as to why you weren't dispatched?

A. Yes, I was quite furious. I went up to the window --

Q. What did you say to Mr. Daley?

A. I said, "Blackie, now, by golly, look. I went out on that job yesterday, and I happen to

[RT 572] \*

know for a fact that \* one of the foremen put over a request for me over the telephone, an order for four men." He says, "You're a goddamn liar. Get away from this goddamn window. If you did get a request, I wouldn't honor it, anyway. I'd make toilet paper out of it."

And I went back to the Dinwiddie-Simpson to verify.

Q. Before you went back, did you have any other conversations with Mr. Daley, or was that all there was?

A. Well, that's -- I went in to the girl in the office and talked to her. In other words, I tried to check the verbatim of the request.

Q. All right. That was later in the morning?

A. Yes.

Q. When you went into the office and talked to the girl there, who was the girl?

A. Evelyn Folick. She was a secretary at the time.

Q. Was she an employee of Local 25?

A. Yes, she was.

Q. What was her job title?

A. Office secretary.

Q. And what did you ask her?

A. I said, "Evelyn, I understand that William Simpson telephoned in a work order for" -- I was under the impression it was half a dozen carpenters, and I said, "Was my name amongst them?" is all I asked her.

Q. What did she say to you?

A. She says -- well, she was kind of adamant. She didn't give me any direct answer

[RT 573] \*

yet. "There was an order \* for six carpenters,



but I'd rather not discuss it. You'd better talk to Blackie," and that's the answer she gave me.

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Q. BY MR. HOBART: Mr. Hill, did they actually admit to you that your name was on there? Did she, or did she not "Yes" or "No"?

A. Well, to my recollection, I wouldn't say for sure. She admitted there was an order there for five or six carpenters, and as far as I can recall, she gave me an inkling that my name was on, or not on it. She got -- I wouldn't remember. She got scared and just hushed up right away.

Q. When you left the office, where did you next go?

A. I went back down to the Simpson-Dinwiddie job then.

Q. Who did you see when you got there?

A. Before this time I went down to see Mr. Simpson again, himself, personally.

Q. Were you able to see him?

A. Yes, I got up in the office to see him.

Q. Okay. Now, again, you can't say

[RT 574] \*

anything he said, \* because that's hearsay, aside from what's in the deposition.

When you were there at the jobsite, did you discuss getting yourself another request from anybody?

A. Yes. I don't think it was that very day, but I had a conversation with another foreman. He came through there, and he says, "Jeez, I thought you" --

Q. You can't say what the other foreman said.

A. I discussed it with another foreman.

Q. Okay. Who was the other foreman that you discussed it with?

A. His name was Larry Buetner.

Q. Now, Mr. Buetner was a foreman on the Dinwiddie-Simpson job?

A. Pretty sure of it.

Q. This is the same job we have been talking about?

A. That's correct.

Q. How many days after May 1st was that?

A. Oh, it would be a period in there -- I don't know, could be five or six days. Wasn't very far.

Q. Now, after you had talked with him, did you have any frame of mind as to whether you were going to be requested by him?

A. By him?

Q. Yes.

A. When I left the job after talking with him, I was under the impression that he was also going to put a request in for me.

Q. Did you ever receive a request for

[RT 575] \*

that job -- \* strike that.

Were you ever dispatched on that job at all?

A. No, I wasn't.

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